



# Finance Act 2015

## 2015 CHAPTER 11

### PART 1

#### INCOME TAX, CORPORATION TAX AND CAPITAL GAINS TAX

### CHAPTER 2

#### INCOME TAX: GENERAL

## 21 Disguised investment management fees

(1) In Part 13 of ITA 2007 (tax avoidance), after Chapter 5D insert—

### “CHAPTER 5E

#### DISGUISED INVESTMENT MANAGEMENT FEES

#### 809EZA Disguised investment management fees: charge to income tax

- (1) Where one or more disguised fees arise to an individual in a tax year from one or more investment schemes (whether or not by virtue of the same arrangements), the individual is liable for income tax for the tax year in respect of the disguised fee or fees as if—
  - (a) the individual were carrying on a trade for the tax year,
  - (b) the disguised fee or fees were the profits of the trade of the tax year, and
  - (c) the individual were the person receiving or entitled to those profits.
- (2) For the purposes of subsection (1) the trade is treated as carried on—
  - (a) in the United Kingdom, to the extent that the individual performs the relevant services in the United Kingdom;

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- (b) outside the United Kingdom, to the extent that the individual performs the relevant services outside the United Kingdom;  
and for this purpose “the relevant services” means the investment management services by virtue of which the disguised fee or fees arise to the individual in the tax year.
- (3) For the purposes of this Chapter a “disguised fee” arises to an individual in a tax year from an investment scheme if—
- (a) the individual performs investment management services directly or indirectly in respect of the scheme under any arrangements,
  - (b) the arrangements involve at least one partnership,
  - (c) under the arrangements, a management fee arises to the individual directly or indirectly from the scheme in the tax year (see section 809EZB), and
  - (d) some or all of the management fee is untaxed;
- and the amount of the disguised fee is so much of the management fee as is untaxed.
- (4) For the purposes of subsection (3) the management fee is “untaxed” if and to the extent that the fee would not (apart from this section)—
- (a) be charged to tax under ITEPA 2003 as employment income of the individual for any tax year, or
  - (b) be brought into account in calculating the profits of a trade of the individual for the purposes of income tax for any tax year.
- (5) In subsection (4) “trade” includes profession or vocation.
- (6) In this Chapter “investment scheme” means—
- (a) a collective investment scheme, or
  - (b) an investment trust.

#### **809EZB Meaning of “management fee” in section 809EZA**

- (1) Subject as follows, for the purposes of section 809EZA “management fee” means any sum (including a sum in the form of a loan or advance or an allocation of profits) except so far as the sum constitutes—
- (a) a repayment (in whole or part) of an investment made directly or indirectly by the individual in the scheme,
  - (b) an arm's length return on an investment made directly or indirectly by the individual in the scheme, or
  - (c) carried interest (see sections 809EYC and 809EYD).
- (2) For the purposes of subsection (1)(b) a return on an investment is “an arm's length return” if—
- (a) the return is on an investment which is of the same kind as investments in the scheme made by external investors,
  - (b) the return on the investment is reasonably comparable to the return to external investors on those investments, and
  - (c) the terms governing the return on the investment are reasonably comparable to the terms governing the return to external investors on those investments.

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- (3) In this Chapter “sum” includes any money or money's worth (and other expressions are to be construed accordingly).
- (4) Where—
- (a) a sum in the form of money's worth arises to the individual from the scheme in the ordinary course of the scheme's business, and
  - (b) the individual gives the scheme money in exchange for the sum, the sum constitutes a “management fee” only to the extent that its market value at the time it arises exceeds the amount of the money given by the individual.

### **809EZC Meaning of “carried interest” in section 809EZB**

- (1) For the purposes of section 809EZB “carried interest” means a sum which arises to the individual under the arrangements by way of profit-related return.

This is subject to subsections (3) to (8) (sums where no significant risk of not arising); and see also section 809EZD (sums treated as carried interest).

- (2) A sum which arises to the individual under the arrangements does so by way of “profit-related return” if under the arrangements—
- (a) the sum is to, or may, arise only if—
    - (i) there are profits for a period on the investments, or on particular investments, made for the purposes of the scheme, or
    - (ii) there are profits arising from a disposal of the investments, or of particular investments, made for those purposes,
  - (b) the amount of the sum which is to, or may, arise is variable, to a substantial extent, by reference to those profits, and
  - (c) returns to external investors are also determined by reference to those profits;

but where any part of the sum does not meet these conditions, that part is not to be regarded as arising by way of “profit-related return”.

- (3) Where—
- (a) one or more sums (“actual sums”) arise to the individual under the arrangements by way of profit-related return in a tax year, and
  - (b) there was no significant risk that a sum of at least a certain amount (“the minimum amount”) would not arise to the individual,
- so much of the actual sum, or of the aggregate of the actual sums, as is equal to the minimum amount is not “carried interest”.

(See subsections (7) and (8) as to how the minimum amount is to be apportioned between the actual sums where more than one actual sum arises in the tax year.)

- (4) For the purposes of subsection (3)(b) assess the risk both—
- (a) in relation to each actual sum (and the investments to which it relates) individually, taking into account also any other sums that might have arisen to the individual under the arrangements instead of that sum, and

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- (b) in relation to the actual sum or sums and any other sums that might have arisen to the individual under the arrangements by way of profit-related return in the tax year (and the investments to which all those sums relate) taken as a whole;  
 (so that, in a particular case, some of the minimum amount may arise by assessing the risk in accordance with paragraph (a) and some by assessing it in accordance with paragraph (b)).
- (5) For the purposes of subsection (3)(b) assess the risk as at the latest of—
  - (a) the time when the individual becomes party to the arrangements,
  - (b) the time when the individual begins to perform investment management services directly or indirectly in respect of the scheme under the arrangements, and
  - (c) the time when a material change is made to the arrangements so far as relating to the sums which are to, or may, arise to the individual.
- (6) For the purposes of subsection (3)(b) ignore any risk that a sum is prevented from arising to the individual (by reason of insolvency or otherwise).
- (7) Where more than one actual sum arises in the tax year, the minimum amount is to be apportioned between the actual sums as follows for the purposes of subsection (3)—
  - (a) so much of the minimum amount as is attributable to a particular actual sum is to be apportioned to that actual sum, and
  - (b) so much of the minimum amount as is not attributable to any particular actual sum is to be apportioned between the actual sums on a just and reasonable basis.
- (8) For the purpose of subsection (7) any part of the minimum amount is attributable to a particular actual sum to the extent that there was no significant risk that that part would not arise to the individual in relation to that actual sum, assessing the risk in accordance with subsection (4)(a).

#### **809EZD Sums treated as “carried interest” for purposes of section 809EZB**

- (1) A sum falling within subsection (2) or (3)—
  - (a) is to be assumed to meet the requirements of section 809EYC, and
  - (b) accordingly, is to be treated as constituting “carried interest” for the purposes of section 809EZB.
- (2) A sum falls within this subsection if, under the arrangements, it is to, or may, arise to the individual out of profits on the investments made for the purposes of the scheme, but only after—
  - (a) all, or substantially all, of the investments in the scheme made by the participants have been repaid to the participants, and
  - (b) each external investor has received a preferred return on all, or substantially all, of the investor's investments in the scheme.
- (3) A sum falls within this subsection if, under the arrangements, it is to, or may, arise to the individual out of profits on a particular investment made for the purposes of the scheme, but only after—
  - (a) all, or substantially all, of the relevant investments made by participants have been repaid to those participants, and

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- (b) each of those participants who is an external investor has received a preferred return on all, or substantially all, of the investor's relevant investments;

and for this purpose “relevant investments” means those investments in the scheme to which the particular investment made for the purposes of the scheme is attributable.

- (4) In this section “preferred return” means a return of not less than the amount that would be payable on the investment by way of interest if—
- (a) compound interest were payable on the investment for the whole of the period during which it was invested in the scheme, and
  - (b) the interest were calculated at a rate of 6% per annum, with annual rests.

### 809EZE Interpretation of Chapter

- (1) In this Chapter—

“arrangements” includes any agreement, understanding, scheme, transaction or series of transactions (whether or not legally enforceable);

“collective investment scheme” has the meaning given by section 235 of FISMA 2000;

“external investor”, in relation to an investment scheme and any arrangements, means a participant in the scheme other than—

- (a) an individual who performs investment management services directly or indirectly in respect of the scheme, or
- (b) a person through whom sums are to, or may, arise directly or indirectly to such an individual from the scheme under the arrangements;

“investment management services”, in relation to an investment scheme, includes—

- (a) seeking funds for the purposes of the scheme from participants or potential participants,
- (b) researching potential investments to be made for the purposes of the scheme,
- (c) acquiring, managing or disposing of property for the purposes of the scheme, and
- (d) acting for the purposes of the scheme with a view to assisting a body in which the scheme has made an investment to raise funds;

“investment trust” means a company in relation to which conditions A to C in section 1158 of CTA 2010 are met (or treated as met); and for this purpose “company” has the meaning given by section 1121 of CTA 2010;

“market value” has the same meaning as in TCGA 1992 (see sections 272 and 273 of that Act);

“participant”—

- (a) in relation to a collective investment scheme, is construed in accordance with section 235 of FISMA 2000;

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- (b) in relation to an investment trust, means a member of the investment trust;
- “profits”, in relation to an investment made for the purposes of an investment scheme, means profits (including unrealised profits) arising from the acquisition, holding, management or disposal of the investment (taking into account items of a revenue nature and items of a capital nature).
- (2) In this Chapter a reference to an investment made by a person in an investment scheme is a reference to a contribution by the person (whether by way of capital, loan or otherwise) towards the property subject to the scheme (but does not include a sum committed but not yet invested).
- (3) For the purposes of subsection (2) a person who holds a share in an investment scheme which is a company limited by shares and who acquired the share from a person other than the scheme is to be taken to have made a contribution towards the property subject to the scheme equal to—
- (a) the consideration given by the person for the acquisition of the share, or
  - (b) if less, the market value of the share at the time of the acquisition.
- (4) In this Chapter, in relation to an investment scheme which is a company limited by shares—
- (a) references to a repayment of, or a return on, an investment in the scheme include a repayment of, or a return on, an investment represented by a share in the scheme resulting from—
    - (i) the purchase of the share by the scheme,
    - (ii) the redemption of the share by the scheme,
    - (iii) the distribution of assets in respect of the share on the winding up of the scheme, or
    - (iv) any similar process;
  - (b) references to a return on an investment in the scheme include a dividend or similar distribution in respect of a share in the scheme representing the investment.

#### **809EZF Disguised investment management fees: anti-avoidance**

In determining whether section 809EZA applies in relation to an individual, no regard is to be had to any arrangements the main purpose, or one of the main purposes, of which is to secure that that section does not apply in relation to—

- (a) the individual, or
- (b) the individual and one or more other individuals.

#### **809EZG Disguised investment management fees: avoidance of double taxation**

- (1) This section applies where—
- (a) income tax is charged on an individual by virtue of section 809EZA in respect of a disguised fee, and
  - (b) at any time, a tax (whether income tax or another tax) is charged on the individual otherwise than by virtue of section 809EZA in relation to the disguised fee.

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- (2) This section also applies where—
  - (a) income tax is charged on an individual by virtue of section 809EZA in respect of a disguised fee which arises to the individual under the arrangements by way of a loan or advance,
  - (b) at any time, a tax (whether income tax or another tax) is charged on the individual in relation to another sum which arises to the individual under the arrangements, and
  - (c) some or all of the loan or advance has to be repaid as a result of the other sum having arisen to the individual.
- (3) In order to avoid a double charge to tax, the individual may make a claim for one or more consequential adjustments to be made in respect of the tax charged as mentioned in subsection (1)(b) or (2)(b).
- (4) On a claim under this section an officer of Revenue and Customs must make such of the consequential adjustments claimed (if any) as are just and reasonable.
- (5) The value of any consequential adjustments must not exceed the lesser of the income tax charged on the individual as mentioned in subsection (1)(a) or (2)(a) and—
  - (a) where subsection (1) applies, the tax charged as mentioned in subsection (1)(b);
  - (b) where subsection (2) applies, the tax charged as mentioned in subsection (2)(b) in relation to so much of the other sum as does not exceed the amount of the loan or advance that has to be repaid as mentioned in subsection (2)(c).
- (6) Consequential adjustments may be made—
  - (a) in respect of any period,
  - (b) by way of an assessment, the modification of an assessment, the amendment of a claim, or otherwise, and
  - (c) despite any time limit imposed by or under any enactment.

#### **809EZH Powers to amend Chapter**

- (1) The Treasury may by regulations amend this Chapter—
  - (a) so as to change the definition of “investment scheme” for the purposes of this Chapter;
  - (b) so as to change the definition of “participant” for those purposes;
  - (c) so as to change what is “carried interest” for the purposes of section 809EZB.
- (2) Regulations under this section may—
  - (a) make different provision for different purposes, and
  - (b) contain incidental, supplemental, consequential and transitional provision and savings.
- (3) A statutory instrument containing regulations under this section to which subsection (4) applies may not be made unless a draft of the instrument has been laid before and approved by a resolution of the House of Commons.

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- (4) This subsection applies if the regulations contain any provision which has or may have the effect of increasing any person's liability to tax.
- (5) Any other statutory instrument containing regulations under this section is subject to annulment in pursuance of a resolution of the House of Commons.”
- (2) In section 2 of ITA 2007 (overview of Act), in subsection (13)—
- (a) after paragraph (h) insert—  
“ha) disposals of assets through partnerships (Chapter 5D),”;
- (b) after paragraph (ha) insert—  
“hb) disguised investment management fees (Chapter 5E),”.
- (3) In Schedule 4 to ITA 2007 (index of defined expressions), at the appropriate places insert—

|   |                     |
|---|---------------------|
| “arrangements (in Chapter 5E of Part 13)  | section 809EZE(1)”  |
| “collective investment scheme (in Chapter 5E of Part 13)  | section 809EZE(1)”  |
| “disguised fee (in Chapter 5E of Part 13)   | section 809EZA(3)”  |
| “external investor (in Chapter 5E of Part 13)   | section 809EZE(1)”  |
| “investment (in investment scheme) (in Chapter 5E of Part 13)                                     | section 809EZE(2)”  |
| “investment management services (in Chapter 5E of Part 13)  | section 809EZE(1)”  |
| “investment scheme (in Chapter 5E of Part 13)   | section 809EZA(6)”  |
| “investment trust (in Chapter 5E of Part 13)  | section 809EZE(1)”  |
| “market value (in Chapter 5E of Part 13)  | section 809EZE(1)”  |
| “participant (in Chapter 5E of Part 13)   | section 809EZE(1)”  |
| “profits (on investment made for purposes of investment scheme) (in Chapter 5E of Part 13)        | section 809EZE(1)”  |
| “repayment of, and return on, investment in certain investment schemes (in Chapter 5E of Part 13) | section 809EZE(4)”  |
| “sum (in Chapter 5E of Part 13)   | section 809EZB(3)”. |

- (4) The amendments made by subsections (1), (2)(b) and (3) have effect in relation to sums arising on or after 6 April 2015 (whenever the arrangements under which the sums arise were made).



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