
STATUTORY INSTRUMENTS

2005 No. 2017

The Partnerships (Restrictions on Contributions to a Trade) Regulations 2005

Restrictions on computing the amount of an individual's contribution to a trade - Loans

4.—(1) This regulation applies where—

- (a) an individual takes out a loan in connection with his financing of the whole or part of a contribution to the relevant trade, and
- (b) at least one of the following conditions is satisfied.

Condition 1

There is, at any time an agreement or arrangement, under which all or any of the financial cost of repaying the loan is, will or may be borne, or ultimately borne, by any other person.

Condition 2

All or any of the financial cost of repaying the loan is at any time borne, or ultimately borne, by any other person (except under the terms of an agreement or arrangement falling within Condition 1).

Condition 3

The liability to repay the loan is at any time assumed or released by any other person.

Condition 4

The actual financial cost which the individual incurs in repaying the loan during a period mentioned in paragraph (4) is substantially less than what the financial cost to him would be on arm's length repayment terms (those costs being determined in accordance with paragraphs (3) and (4)), or is nil.

4.—(2) Where any of Conditions 1 to 3 are satisfied, there shall be excluded when computing the amount of the individual's contribution to the relevant trade at the time in question the financial cost of repaying the loan, which is, will or may be borne or ultimately borne by the other person, or the liability to repay which is assumed or released by the other person, as the case may be.

(3) In determining the financial cost on arm's length repayment terms—

- (a) the actual amount of the loan shall be taken into account,
- (b) it shall be assumed that the individual repays the loan personally (without recourse to any other person or fund), and
- (c) the rate of interest, period of the loan, repayment terms and other terms of the loan shall be assumed to be such that might be expected to be applicable if the loan were made—
 - (i) by a bank in the ordinary course of its lending business, and
 - (ii) by way of a bargain made at arm's length.

(4) The comparison required by Condition 4 shall be carried out over five year periods, and computations shall be made to determine the earliest such period—

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- (a) beginning on or after 2nd December 2004 (or the date when the loan was taken out, if later) and
- (b) for which Condition 4 is satisfied.

The end of that period is referred to in paragraph (5) as “the relevant time”.

(5) Where Condition 4 is satisfied, there shall be excluded when computing the amount of the individual’s contribution to the relevant trade at the relevant time the capital liability outstanding under the loan at the relevant time, whether due from the individual or any other person or fund.