



Finance Act 2008

2008 CHAPTER 9

PART 2

INCOME TAX, CORPORATION TAX AND CAPITAL GAINS TAX_GENERAL

Other anti-avoidance provisions

60 Restrictions on trade loss relief for individuals

Schedule 21 contains provision restricting relief for losses made by individuals who, otherwise than in partnership, carry on trades in a non-active capacity.

61 Non-active partners

- (1) In section 103B(2) of ITA 2007 (meaning of “non-active partner” for purposes of provisions restricting trade loss relief), for “carried on for the purposes of the trade” substitute “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.”
- (2) The amendment made by subsection (1) has effect in relation to relevant periods ending on or after 12 March 2008.

62 Financial arrangements avoidance

Schedule 22 contains provision about avoidance involving financial arrangements.

63 Manufactured payments

- (1) Schedule 23 contains anti-avoidance provisions about manufactured payments.

Status: This is the original version (as it was originally enacted).

- (2) The amendments made by that Schedule have effect in relation to manufactured payments (including deemed manufactured payments) made (or treated as made) on or after 31 January 2008.

64 Controlled foreign companies

- (1) Chapter 4 of Part 17 of ICTA (controlled foreign companies) is amended as follows.
- (2) In section 747 (imputation of chargeable profits of controlled foreign companies)—
- (a) in subsection (6), before “and” at the end of paragraph (a) insert—
 - “(aa) any reference in this Chapter to its chargeable profits for an accounting period includes (subject to subsections (7) to (9)) income which accrues during that accounting period to the trustees of a settlement in relation to which the company is a settlor or a beneficiary;”, and
 - (b) after that subsection insert—
 - “(7) Where there is more than one settlor or beneficiary in relation to the settlement mentioned in subsection (6)(aa), the income is to be apportioned between the company and the other settlors or beneficiaries on a just and reasonable basis.
 - (8) Where income within subsection (6)(aa) is included in the chargeable profits of a company, any dividend or other distribution received by the company which derives from that income is not included in the chargeable profits of the company to the extent that it is so derived.
 - (9) Any income within subsection (6)(aa) which would (apart from this subsection)—
 - (a) be included in the chargeable profits of a company which is a beneficiary in relation to a settlement and apportioned under subsection (3), and
 - (b) be included in the chargeable profits of a company which is a settlor in relation to the settlement and apportioned under that subsection,
 is not to be included in the chargeable profits of the company which is a settlor.”
- (3) In section 755D (meaning of control)—
- (a) after subsection (1) insert—
 - “(1A) For the purposes of this Chapter a person also controls a company if the person possesses, or is entitled to acquire, such rights as would—
 - (a) if the whole of the income of the company were distributed, entitle the person to receive the greater part of the amount so distributed,
 - (b) if the whole of the company’s share capital were disposed of, entitle the person to receive the greater part of the proceeds of the disposal, or
 - (c) in the event of the winding-up of the company or in any other circumstances, entitle the person to receive the greater part

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- of the assets of the company which would then be available for distribution.”, and
- (b) in subsection (2), after “above” insert “or satisfy subsection (1A) above”.
- (4) In paragraph 2A of Schedule 25 (acceptable distribution policy)—
- (a) in sub-paragraph (2), for “sub-paragraph (4)” substitute “sub-paragraphs (4) and (4A)”, and
- (b) after sub-paragraph (4) insert—
- “(4A) Sub-paragraph (2) does not apply where the distribution condition is satisfied in relation to the relevant accounting period, but—
- (a) the relevant profits for that period do not include income within sub-paragraph (4B), and
- (b) if that income were included, the distribution condition would not be satisfied in relation to that period.
- (4B) The income within this sub-paragraph is—
- (a) any income which accrues during the relevant accounting period to the trustees of a settlement in relation to which the company is a settlor or a beneficiary, and
- (b) any income which accrues during that period to a partnership of which the company is a partner, apportioned between the company and the other partners on a just and reasonable basis.
- (4C) Where there is more than one settlor or beneficiary in relation to the settlement mentioned in sub-paragraph (4B)(a), the income is to be apportioned between the company and the other settlors or beneficiaries on a just and reasonable basis.
- (4D) In sub-paragraph (4B)(b) “partnership” includes an entity established under the law of a country or territory outside the United Kingdom of a similar character to a partnership; and “partner” is to be read accordingly.”
- (5) In paragraph 6 of Schedule 25 (definition of exempt activities), after sub-paragraph (5B) insert—
- “(5C) For the purposes of this paragraph, the gross income of a holding company or a superior holding company during an accounting period includes—
- (a) any income which accrues during that period to the trustees of a settlement in relation to which the company is a settlor or a beneficiary, and
- (b) any income which accrues during that period to a partnership of which the company is a partner, apportioned between the company and the other partners on a just and reasonable basis.
- (5D) Where there is more than one settlor or beneficiary in relation to the settlement mentioned in sub-paragraph (5C)(a), the income is to be apportioned between the company and the other settlors or beneficiaries on a just and reasonable basis.

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- (5E) In sub-paragraph (5C)(b) “partnership” includes an entity established under the law of a country or territory outside the United Kingdom of a similar character to a partnership; and “partner” is to be read accordingly.”
- (6) The amendments made by subsections (2) and (5) have effect in relation to income accruing on or after 12 March 2008.
- (7) The amendments made by subsection (3) have effect for determining whether, at any time on or after 12 March 2008, a company is controlled by persons resident in the United Kingdom for the purposes of Chapter 4 of Part 17 of ICTA.
- (8) The amendments made by subsection (4) have effect in relation to any dividend paid on or after 12 March 2008.
- (9) In relation to an accounting period of a company beginning before, and ending on or after, 12 March 2008 (“the straddling period”), the amendments made by this section have effect as if, for the purposes of Chapter 4 of Part 17 of ICTA, so much of the period as falls before that date, and so much of the period as falls on or after that date, were separate accounting periods.
- (10) The company’s chargeable profits for the straddling period, and its creditable tax (if any) for that period, are to be apportioned to the two separate accounting periods on a just and reasonable basis.
- (11) In this section “accounting period”, “chargeable profits” and “creditable tax” have the same meaning as in Chapter 4 of Part 17 of ICTA.

65 Intangible fixed assets: related parties

- (1) In Schedule 29 to FA 2002 (gains and losses of a company from intangible fixed assets), after paragraph 95 (meaning of “related party”) insert—

“Persons treated as “related parties”

- 95A (1) For the purposes of this Schedule, a person (“P”) shall be treated as a related party in relation to a company (“C”) within a Case in paragraph 95(1) if P would be a related party in relation to C within that Case but for any person (other than an individual) being the subject of—
- (a) insolvency arrangements, or
 - (b) equivalent arrangements under the law of any country or territory (whether made when the person is solvent or insolvent).
- (2) For the purpose of this paragraph, “insolvency arrangements” includes—
- (a) arrangements under which a person acts as the liquidator, provisional liquidator, receiver, administrator or administrative receiver of a company or partnership, and
 - (b) voluntary arrangements proposed or approved in relation to a company or partnership under Part 1 of the Insolvency Act 1986 or Part 2 of the Insolvency (Northern Ireland) Order 1989.
- (3) In this paragraph—
- “administrative receiver” means an administrative receiver within the meaning of section 251 of the Insolvency Act 1986 or Article 5(1) of the Insolvency (Northern Ireland) Order 1989,

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“administrator” means a person appointed to manage the affairs, business and property of the company or partnership under Schedule B1 to that Act or to that Order, and

“receiver” means a person appointed as receiver of some or all of the property of the company or partnership under an enactment or under an instrument issued for the purpose of representing security for, or the rights of creditors in respect of, any debt.”

- (2) Subject to subsections (4) and (5), the amendment made by subsection (1) has effect in relation to the debits and credits to be brought into account for accounting periods beginning on or after 12 March 2008.
- (3) For the purposes of subsection (2), an accounting period beginning before, and ending on or after, that day is treated as if so much of that period as falls before that day, and so much of that period as falls on or after that day, were separate periods.
- (4) The amendment made by subsection (1) does not have effect for the purpose of determining whether a person was a related party in relation to a company at a time before 12 March 2008.
- (5) That amendment has effect, for the purposes of paragraph 92 of Schedule 29 to FA 2002 as it applies otherwise than for determining the debits and credits to be brought into account under that Schedule, in relation to any transfer of an asset made on or after 12 March 2008.

66 Repeal of obsolete anti-avoidance provisions

- (1) In Part 17 of ICTA (tax avoidance)—
 - (a) in section 704 (cancellation of corporation tax advantages: the prescribed circumstances), omit—
 - (i) paragraph B (and the “OR” after it), and
 - (ii) in paragraph C(1), paragraph (b) (and the “or” before it),
 - (b) in section 709 (definitions), omit subsection (2A),
 - (c) omit sections 731 to 735 (purchase and sale of securities), and
 - (d) omit section 736 (company dealing in securities: distribution materially reducing value of holding).
- (2) In Part 13 of ITA 2007 (tax avoidance)—
 - (a) in section 684(2) (person liable to counteraction of income tax advantage), omit the entry relating to section 687 of that Act,
 - (b) omit section 687 (deductions from profits obtained following distribution or dealings), and
 - (c) in section 688 (receipt of consideration representing company’s assets, future receipts or trading stock), omit—
 - (i) in subsection (3), paragraph (b) (and the “or” before it), and
 - (ii) subsections (4), (5) and (9).
- (3) In consequence of the amendments made by subsection (1)(a) and (b), omit—
 - (a) in FA 1997, section 73, and
 - (b) in ITA 2007, paragraph 155(4) and (5) and (6)(b) of Schedule 1.
- (4) In consequence of the amendments made by subsection (1)(c) and (d), omit—

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- (a) in ICTA, sections 343(5) and 738,
 - (b) in FA 1990, section 53,
 - (c) in FA 1991, sections 55 and 56,
 - (d) in TCGA 1992, paragraph 14(40) and (41) of Schedule 10,
 - (e) in FA 1994, paragraph 17 of Schedule 16,
 - (f) in FA 1995, section 81,
 - (g) in FA 1996—
 - (i) paragraph 36 of Schedule 20, and
 - (ii) paragraph 9 of Schedule 38,
 - (h) in FA 1997, section 77,
 - (i) in F(No.2)A 1997—
 - (i) section 26, and
 - (ii) paragraph 14 of Schedule 6,
 - (j) in FA 2003, paragraph 6 of Schedule 38,
 - (k) in ITTOIA 2005, paragraphs 302 and 303 of Schedule 1,
 - (l) in ITA 2007—
 - (i) in section 64(8), paragraph (f) (and the “and” before it),
 - (ii) in section 72(5), paragraph (f) (and the “and” before it),
 - (iii) in section 448(3), “and section 451”,
 - (iv) in section 449(3), “and section 451”,
 - (v) section 451,
 - (vi) in section 505, in subsection (4) “and section 506” and, in subsection (5) “and in section 506”,
 - (vii) section 506, and
 - (viii) paragraphs 167 to 170 of Schedule 1, and
 - (m) in FA 2007, paragraph 6 of Schedule 14.
- (5) The amendments made by subsections (1)(a) and (b), (2) and (3) have effect in relation to transactions in securities entered into on or after 1 April 2008.
- (6) The amendment made by subsection (1)(c) has effect in relation to cases where the purchase by the first buyer (within the meaning of section 731(2) of ICTA) is made on or after that date.
- (7) The amendment made by subsection (1)(d) has effect in relation to distributions made on or after that date.
- (8) The amendments made by subsection (4) have effect in accordance with subsections (6) and (7).