

## SCHEDULES

### SCHEDULE 21

Section 60

#### RESTRICTION ON LOSS RELIEF FOR NON-ACTIVE TRADERS

##### *Introduction*

1 ITA 2007 is amended as follows.

##### *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.

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- (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.
- (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,

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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.
- (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

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“a relevant film provision” means any one of sections 137 to 140 of ITTOIA 2005 (relief for certified master versions of films).”

*Other amendments*

- 3 In section 32 (liability not dealt with in the calculation), before the entry relating to section 79(1) insert—
- “under section 74C(5) (non-active traders: withdrawal of relief),”.
- 4 In section 64(8) (deduction of trade losses from general income), after paragraph (b) insert—
- “(ba) sections 74A to 74D (general restrictions on relief),”.
- 5 In section 72(5) (early trade loss relief)—
- (a) in paragraph (b), after “relief” insert “unless trade is commercial etc”, and
- (b) after that paragraph insert—
- “(ba) sections 74A to 74D (general restrictions on relief),”.

*Commencement*

- 6 (1) Section 74A of ITA, and the other provisions inserted into that Act by this Schedule so far as relating to that section, have effect in relation to any loss made by an individual in the tax year 2007-08 or any subsequent tax year.
- (2) But those provisions do not have effect in relation to a loss made by an individual in a tax year the basis period for which ended before 12 March 2008.
- (3) If the basis period for the tax year in which a loss is made by an individual begins before 12 March 2008 and ends on or after that date (a “straddling basis period”), the amount of that loss for the purposes of section 74A of ITA 2007 is—
- (a) the amount of sideways relief and capital gains relief which (after applying the restrictions under the other provisions of Chapter 2 of Part 4 of that Act) may be given to the individual for that loss, less
- (b) the amount (if any) of the pre-announcement loss.
- (4) “The pre-announcement loss” is determined as follows.
- (5) Calculate the profits or losses of the straddling basis period, but without regard to capital allowances and qualifying film expenditure (within the meaning of section 74D of ITA 2007).
- (6) If that calculation produces a loss, apportion the loss produced by that calculation to the part of the straddling basis period which falls before 12 March 2008 in proportion to the number of days in that part.
- (7) Calculate so much of the loss of the straddling basis period as derives from relevant pre-announcement capital expenditure.
- (8) The pre-announcement loss is the sum of—
- (a) the amount of the loss apportioned under sub-paragraph (6) (if any), and
- (b) so much of the loss of the straddling period (if any) as derives from relevant pre-announcement capital expenditure.

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- (9) For the purposes of this paragraph the amount of the loss of the straddling basis period that derives from relevant pre-announcement capital expenditure is determined on a just and reasonable basis.
- (10) In this paragraph “relevant pre-announcement capital expenditure” means—
- (a) any capital allowance in respect of expenditure paid before 12 March 2008, and
  - (b) any capital allowance in respect of expenditure paid on or after that date pursuant to an unconditional obligation in a contract made before that date; and for this purpose “an unconditional obligation” means an obligation which may not be varied or extinguished by the exercise of any right conferred on the individual in question (whether or not under the contract).
- 7 (1) Section 74B of ITA, and the other provisions inserted into that Act by this Schedule so far as relating to that section, have effect in relation to a loss arising directly or indirectly in consequence of, or otherwise in connection with, relevant tax avoidance arrangements made on or after 12 March 2008.
- (2) But those provisions do not have effect if the arrangements were made pursuant to an unconditional obligation in a contract made before that date; and for this purpose “an unconditional obligation” means an obligation which may not be varied or extinguished by the exercise of any right conferred on the individual in question (whether or not under the contract).