



Finance Act 2005

2005 CHAPTER 7

PART 2

INCOME TAX, CORPORATION TAX AND CAPITAL GAINS TAX

CHAPTER 7

AVOIDANCE INVOLVING PARTNERSHIP

Partners: recovery of excess relief

74 Recovery of excess relief given under section 380 or 381 of ICTA

- (1) This section applies where—
- (a) an individual makes one or more claims for relief under section 380 or 381 of ICTA at any time in respect of any relevant losses sustained by him in a trade (“the relevant trade”),
 - (b) the whole or part of that relief has been claimed against income other than income consisting of profits arising from the relevant trade,
 - (c) the amount of the relief which could be given against such income was determined in accordance with one or more of the restriction provisions (whether or not any of those provisions prevented any amount of relief being given), and
 - (d) at any time after the claim or claims mentioned in paragraph (a) has or have been made, a chargeable event occurs in relation to the individual.
- (2) The “restriction provisions” are—
- (a) section 117 of ICTA (restriction on relief for limited partners),
 - (b) that section as applied by section 118ZB of ICTA in relation to a member of a limited liability partnership, and
 - (c) section 118ZE of ICTA (restriction on relief for non-active partners).

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- (3) A “chargeable event” occurs in relation to an individual at any time when a relevant decrease in the individual’s contribution to the relevant trade occurs which immediately results in—
- (a) the total losses claimed (less any reclaimed relief) becoming greater than the individual’s contribution to the relevant trade, or
 - (b) an increase in the amount (if any) by which the total losses claimed (less any reclaimed relief) exceeds the individual’s contribution to the relevant trade.
- (4) Where a chargeable event occurs in relation to an individual—
- (a) the individual is to be treated as receiving at the time of the occurrence of the chargeable event an amount of income equal to the chargeable amount,
 - (b) that income is not to be treated as profits of the relevant trade and is to be chargeable to income tax for the year of assessment in which the chargeable event occurs, and
 - (c) the individual is to be liable for any tax so chargeable.
- (5) The “total losses claimed” means the total amount of any losses sustained by the individual in the relevant trade in any eligible year of assessment to the extent that they are losses—
- (a) in respect of which the individual has at any time claimed relief under section 380 or 381 of ICTA, or
 - (b) that he has at any time claimed as allowable losses under section 72 of FA 1991.
- (6) “Reclaimed relief” means the total of the amounts which the individual has been treated as receiving under subsection (4) as a result of the occurrence of any previous chargeable event in relation to the individual in respect of the relevant trade.
- (7) The “individual’s contribution to the relevant trade” at any time means the amount of the individual’s contribution to that trade at that time within the meaning given for the purposes of the relevant restriction provision and computed at that time in accordance with that provision.
- (8) The “relevant restriction provision” means—
- (a) the restriction provision which applied as mentioned in subsection (1)(c), or
 - (b) where more than one restriction provision so applied, the restriction provision which so applied to the amount of relief which could be given in respect of the relevant loss which was most recently sustained by the individual in the relevant trade.
- (9) A “relevant decrease in the individual’s contribution to the relevant trade” occurs when the amount of that contribution becomes, as a result of the application of any regulations made under section 118ZN of ICTA (partners: meaning of “contribution to the trade”), less than the amount it would otherwise be apart from the application of those regulations.
- (10) The “amount of the relevant decrease in the individual’s contribution to the relevant trade” is the difference between those two amounts.
- (11) An “eligible year of assessment” is—
- (a) a year of assessment at any time during which the individual carried on the relevant trade as a member of a limited liability partnership or as a limited partner within the meaning given by section 117(2) of ICTA, or

- (b) a qualifying year of assessment within the meaning of section 118ZE of that Act.
- (12) In sections 75 to 77 references to expressions which are defined in this section are to be construed in accordance with this section.
- (13) This section is deemed to have come into force on 2nd December 2004.

75 Computing the chargeable amount

- (1) For the purposes of section 74, the “chargeable amount” is determined by taking whichever is the smallest of amounts A, B and C.
- (2) Amount A is the amount of the relevant decrease in the individual’s contribution to the relevant trade which constitutes the chargeable event.
- (3) Amount B is the amount given by—
 - (a) taking, at the time immediately after the occurrence of the chargeable event, the amount of the total losses claimed which are relevant losses, and
 - (b) reducing that amount (but not below nil) by any reclaimed relief at that time.
- (4) Amount C is the amount given by—
 - (a) taking the amount by which, at the time immediately after the occurrence of the chargeable event, the total losses claimed exceed the individual’s contribution to the relevant trade, and
 - (b) reducing that amount (but not below nil) by any reclaimed relief at that time.
- (5) This section is deemed to have come into force on 2nd December 2004.

76 Meaning of “relevant loss”

- (1) For the purposes of sections 74 and 75 a “relevant loss” means—
 - (a) a loss sustained by the individual in the relevant trade in a year of assessment the basis period for which begins on or after 2nd December 2004, or
 - (b) a post-announcement loss sustained by the individual in the relevant trade in a straddling year of assessment.
- (2) For the purposes of this section—
 - “basis period” means the basis period given by Chapter 15 of Part 2 of ITTOIA 2005, as applied by section 853 of that Act, except that the basis period for a year of assessment to which section 199(1) of that Act applies is to be taken to be the period beginning with the date when the individual first carried on the relevant trade and ending with the end of the year of assessment;
 - “post-announcement loss”, in relation to a straddling year of assessment, means the loss (if any) sustained by the individual in the relevant trade in the period which—
 - (a) begins with 2nd December 2004, and
 - (b) ends with the end of the basis period for that straddling year of assessment;
 - “straddling year of assessment” means a year of assessment the basis period for which begins before and includes 2nd December 2004.

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- (3) In the definition of “post-announcement loss” in subsection (2), the reference to the loss sustained by the individual in the relevant trade in a period is a reference to his share of any losses of the partnership arising for that period from the trade, and—
- (a) the losses of the partnership arising for that period from the trade are to be computed in the same way as if the period were one for which profits and losses had to be computed for the purposes of section 849 of ITTOIA 2005, and
 - (b) the individual’s share of the losses is to be determined according to his interest in the partnership during that period.
- (4) In subsection (3) the references to “the partnership” are to the partnership as a member of which the individual carries on the relevant trade.
- (5) This section is deemed to have come into force on 2nd December 2004.

77 Transitional provision for years of assessment before the year 2005-06

- (1) This section applies in relation to years of assessment which are before the year 2005-06.
- (2) Subsection (4) of section 74 has effect as if for “individual—” to the end there were substituted “individual, the individual is to be treated as receiving at the time of the occurrence of the chargeable event annual profits or gains which are of an amount equal to the chargeable amount and are chargeable to income tax under Case VI of Schedule D.”.
- (3) Section 76 has effect as if—
- (a) in subsection (2) for the definition of “basis period” there were substituted—

““basis period” means the basis period given by sections 60 to 63 of ICTA as applied by section 111(4) and (5) of that Act, except that the basis period for a year of assessment to which section 61(1) of that Act applies is to be taken to be the period beginning with the date when the individual first carried on the relevant trade and ending with the end of the year of assessment;”, and
 - (b) the reference in subsection (3)(a) to section 849 of ITTOIA 2005 were a reference to section 111(2) of ICTA.
- (4) This section is deemed to have come into force on 2nd December 2004.

78 Consequential amendments

- (1) In section 117(2) of ICTA (restriction on relief for limited partners)—
- (a) at the end of the definition of “the aggregate amount” insert—

“less the amount of any reclaimed relief at that time;”, and
 - (b) after that definition insert—

““the amount of any reclaimed relief” at any time means the total of any amounts at that time which the individual has been treated as receiving under section 74 of the Finance Act 2005 (recovery of excess relief given under section 380 or 381) as a result of the

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application of that section of that Act to him in respect of losses sustained by him in the trade;”.

- (2) In section 118ZF of ICTA (meaning of “the aggregate amount”)—
- (a) in subsection (1), after “subsection (2)” insert “, less the amount of any reclaimed relief.”, and
 - (b) after that subsection insert—

“(1A) For the purposes of subsection (1) “the amount of any reclaimed relief” means the total of any amounts which the individual has been treated as receiving under section 74 of the Finance Act 2005 (recovery of excess relief given under section 380 or 381) as a result of the application of that section of that Act to him in respect of losses sustained by him in the trade.”
- (3) In section 121 of FA 2004 (definition of “the losses claimed”)—
- (a) at the end of subsection (1) insert—

“less the amount of any relevant reclaimed relief.”, and
 - (b) after that subsection insert—

“(1A) The “amount of any relevant reclaimed relief” means whichever is the lesser of—

 - (a) the total of any amounts which the individual has been treated as receiving under section 74 of the Finance Act 2005 (recovery of excess relief given under section 380 or 381 of the Taxes Act 1988) as a result of the application of that section of that Act to him in respect of losses sustained by him in the trade, and
 - (b) the total amount of any film-related losses sustained by the individual in the trade in any eligible years of assessment within the meaning of section 74 of the Finance Act 2005 to the extent that they are losses in respect of which he has at any time claimed relief as described in paragraph (a) or (b) of subsection (1) above.”
- (4) The amendments made by this section are deemed to have come into force on 2nd December 2004.