

*These notes refer to the Income Tax Act 2007 (c.3)
which received Royal Assent on 20 March 2007*

INCOME TAX ACT 2007

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Schedule 2: Transitionals and savings

Part 5: Losses (except losses on disposal of shares)

Trade loss relief against general income

Early trade losses relief

3346. The first paragraph under these headings deal with losses in tax years 2007-08 onwards which, under the Part 4 of this Act, can reduce profits of tax years before 2007-08 (tax years before this Act has effect).
3347. The second paragraph under each heading relates to a person who makes a loss for tax year 2006-07 and is denied the corresponding relief under ICTA because the way in which the trade was being carried on was not commercial on 5 April 2007. That person is not to be denied relief for a loss made in 2007-08 purely because this Act looks to a different date, than would have been the case under ICTA, in deciding whether the trade is commercial. See *Change 9* in Annex 1.

Sideways relief: trade leasing allowances given to individuals

3348. This paragraph relates to an individual who makes a loss for tax year 2006-07 and is denied relief under ICTA for trade leasing allowances because the individual fails to meet the tests concerning the period for which the individual carries on the trade or devotes most of his or her time to it. That person is not to be denied relief for trade leasing allowances in 2007-08 purely because this Act looks to different periods for these tests than would have been the case under ICTA. See *Change 10* in Annex 1.

Reliefs for limited partners not to exceed contribution to the firm

Reliefs for members of LLPs not to exceed contribution to the LLP

Members of LLPs: carry-forward of losses

Reliefs for non-active partners not to exceed contribution to the firm

Non-active partners: carry-forward of losses

3349. Each of these paragraphs reflects the clarification that losses used as capital losses are treated in the same way as if they had reduced non-trade income. See *Change 13* in Annex 1 and the commentary on section 103 of this Act.

Restrictions on reliefs for non-active partners: pre-10 February 2004 events

3350. This paragraph adapts, where appropriate, the approach in section 110 of this Act to follow that of section 118ZE of ICTA (restriction on relief for non-active partners).
3351. Broadly, the “aggregate amount” in section 118ZE of ICTA ignored sideways relief given for losses of a tax year with a basis period ending before 10 February 2004 (with suitable adjustments for tax years whose basis period straddled that date). But such relief as was ignored was, so far as possible, deducted from contributions to capital made by the individual before 10 February 2004.
3352. That might still be relevant to an individual who would have been able to benefit from section 118ZJ of ICTA (carry forward of unrelieved losses of non-active partners) that potentially permitted sideways relief for brought forward losses. Additionally, it could be relevant to cases where a partnership that was trading on 10 February 2004 sets up a new trade after that date, because of the change from “contribution to the trade” in the source legislation to “contribution to the firm”. See *Change 16* in Annex 1.

Application of existing regulations under [sections 114 and 802](#)

3353. [The Partnership \(Restrictions on Contributions to a Trade\) Regulations 2005 \(SI 2005/2017\)](#) are amended consequentially on the change from “contribution to the trade” in the source legislation to “contribution to the firm”. See *Change 16* in Annex 1.

Loss relief against miscellaneous income: Case VI losses

3354. This paragraph allows Schedule D Case VI losses to continue to be carried forward for relief against certain income of future years. The income in question would have been Schedule D Case VI income but for ITTOIA 2005 removing, for income tax, that concept in relation to tax years starting after 5 April 2005.