

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

# INCOME TAX ACT 2007

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### **Part 4: Loss relief**

##### **Overview**

235. This Part contains rules relating to various reliefs for losses that are deducted in calculating net income (see Step 2 of section 23). It is based on sections 117 to 118ZO and Chapter 1 of Part 10 (sections 379A to 392) of ICTA.
236. The reliefs are set out in separate Chapters following (so far as relevant) the order in which the types of income concerned are set out in ITTOIA.

#### *Chapter 1: Introduction*

##### *Section 59: Overview of Part*

237. This section provides an overview of the Part. It is new.
238. *Subsection (2)* provides that the Part is to be read with Chapter 3 of Part 2. In particular that Chapter provides rules about the order in which different reliefs are deducted in calculating net income.
239. *Subsection (3)* provides a signpost to rules about the calculation of the amount of losses, for which relief may be available under this Part.

#### *Chapter 2: Trade losses*

##### **Overview**

240. This Chapter provides relief for trading losses.

##### *Section 60: Overview of Chapter*

241. This section provides an overview of the Chapter. It is new.
242. *Subsection (1)* lists the various reliefs available for trade losses and certain restrictions on the reliefs.
243. *Subsection (2)* provides a signpost to Schedule 1B of TMA. Schedule 1B gives rules for the mechanics where there is a claim that relief for losses of one tax year be given against income of an earlier tax year.
244. *Subsection (3)* provides a signpost to provisions which treat an individual as starting or permanently ceasing to carry on a trade, profession or vocation in certain circumstances. It is based on section 384(4) of ICTA.

245. *Subsection (4)* introduces a label (“sideways relief”) for the two reliefs that allow trading losses for a tax year to be set against other income arising in the same tax year or an earlier tax year.

***Section 61: Non-partners: losses of a tax year***

246. This section provides that references to losses made in a tax year means losses made in the basis period for the tax year. It is based on sections 382(3) and 385(1) of ICTA.

***Section 62: Partners: losses of a tax year etc***

247. This section sets out certain rules that apply if the losses are made by a person who is a partner and provides signposts to the relevant provisions in ITTOIA. It is based on sections 110(1A), 118ZE(5) and (6), 382(3), 385(1) and 389(4) of ICTA.

***Section 63: Prohibition against double counting***

248. This section ensures relief is only given once for a particular loss or part of a loss. It is based on sections 380(1), 381(3), 385(7), 388(2), 504A(5) of ICTA and section 72(2) of FA 1991.
249. This section does not reproduce the rule in section 382(4) of ICTA that an amount of a loss of a trade, which would otherwise be included in calculations for two successive years, is not to be included in the calculation for the second of those years. That rule is covered by section 206 of ITTOIA, to which section 61(5) provides a signpost.

***Section 64: Deduction of losses from general income***

250. This section provides for trade loss relief against general income. It is based on section 380(1) of ICTA.
251. “Trade loss relief against general income” is a descriptive label for the relief covered by this section; the words “general income” are not used in Chapter 3 of Part 2 (calculation of income tax liability).
252. The section makes explicit what is only implicit in section 380(1) of ICTA:
- in *subsection (2)*, that a claim may be made for both the tax year in which the allowable loss is incurred and the previous tax year;
  - in *subsection (3)*, what is required in practice to establish how the claim is to apply to each year;
  - in *subsection (4)*, that, in the case of a claim in respect of one year only, the claim must specify which year; and
  - in *subsection (6)*, that a claim specifying one year does not prevent a further claim (in respect of an unused part of the loss) which specifies the other.

***Section 65: How relief works***

253. This section specifies how deductions for the loss are to be made. It is based on section 380(1) and (2) of ICTA.
254. *Subsection (1)* makes explicit what is only implicit in section 380(1) of ICTA, that:
- the whole amount of the loss must be deducted in calculating the claimant’s net income for the specified tax year;
  - if a claim is made in respect of two tax years, then only so much, if any, of the amount of the loss which it has not been possible to deduct from the claimant’s income for the specified year can be deducted in calculating the claimant’s net income for the other year.

255. This section does not deal with the parts of section 380(1)(a) and (b) of ICTA that limit the amount of the deduction for any tax year to the whole of the claimant's income for the year, where the income is less than the amount of the loss. That limit is in section 25(4) and (5). Section 25 contains rules about how the reliefs listed in section 24, which include trade loss relief, are to be deducted at Step 2 of section 23 in order to calculate the claimant's net income.
256. *Subsections (2) and (3)* provide that if claims are made in respect of trade losses incurred in successive tax years and both claims specify that relief is to be given against income of the same tax year, then the claim in respect of the loss in the earlier year takes priority.
257. *Subsection (4)* makes it explicit that this rule also operates in relation to the interaction between claims for trade loss relief and claims for employment loss relief.

### ***Section 66: Restriction on relief unless trade is commercial***

258. This section denies trade loss relief in relation to trades which are not commercial. It is based on section 384 of ICTA.
259. *Subsections (2) and (5)* provide that whether the trade is commercial is determined by reference to the basis period for the tax year, rather than by reference to the tax year as in the source legislation. See *Change 9* in Annex 1.
260. *Subsection (4)* provides for the case where the trade is carried on as part of a larger undertaking. In such a case the larger undertaking (that is the undertaking as a whole) may be carried on with a view to the realisation of profits even if the smaller trade is not.
261. In *subsection (6)*, the reference to Act includes references to Acts of the Scottish Parliament and Northern Ireland legislation. See section 1018 and *Change 152* in Annex 1.

### ***Section 67: Restriction on relief in case of farming or market gardening***

262. This section restricts, in certain cases, the use of losses arising from a trade of farming or market gardening. It is based on section 397(1), (3) to (5) and (8) of ICTA.
263. *Subsection (2)* sets out the circumstances in which loss relief is restricted. Broadly, this is once losses have arisen for six successive tax years. A signpost to section 70 is included since that section sets out the way in which losses are determined in previous tax years.

### ***Section 68: Reasonable expectation of profit***

264. This section sets out the "reasonable expectation of profit" test which, if met, prevents relief being restricted under section 67. It is based on section 397(3) and (5) of ICTA.

### ***Section 69: Whether trade is the same trade***

265. This section sets out a number of assumptions to make in determining whether section 67 restricts relief for losses. It is based on section 397(8) and (10) of ICTA.

### ***Section 70: Determining losses in previous tax years***

266. This section provides rules for deciding whether a trade of farming or market gardening made losses in earlier tax years. It is based on section 397(7) and (10) of ICTA.
267. *Subsection (2)* provides that, for earlier tax years, losses are calculated for actual tax years (6 April to following 5 April) rather than (as is normally the case) for the basis period ending in the tax year.
268. The difference in approach (which prevents any manipulation of periods of account directed at side-stepping the restriction) arises from the fact that losses used to be

calculated for actual tax years, but following the move to a current year basis of assessment (in FA 1994) the calculation of losses for the main loss relief provisions was changed to mirror the calculation of profits.

269. *Subsection (4)* adapts rules in section 203 of ITTOIA to deal with cases where profits or losses have not actually been calculated by reference to tax years. In such cases, the calculation of profits or losses for tax years is an arithmetical exercise, involving apportioning (on a time basis) the profits or losses of periods falling partly within the tax year, and combining these with the profits or losses of any periods falling completely within the tax year.

### ***Section 71: Treating trade losses as CGT losses***

270. This section is a signpost to a capital gains tax relief. It is new.
271. Capital gains tax relief may be available for a tax year in which there is insufficient income to absorb a claim for trade loss relief against general income. Details of that relief are set out in new sections 261B and 261C of TCGA, inserted by Schedule 1 to this Act.

### ***Section 72: Relief for individuals for losses in first 4 years of trade***

272. This section provides relief for losses made in the first four tax years in which an individual carries on a trade. It is based on sections 380(1) and 381(1), (2) and (7) of ICTA.
273. An individual can make a claim for such losses to be deducted in calculating net income for the three tax years which precede the tax year in which the loss is made.

### ***Section 73: How relief works***

274. This section sets out the order in which losses, for which a claim is made under section 72, are deducted from income of the three preceding tax years. It is based on section 381(2) of ICTA.
275. The deduction for the loss is made first from income of the earliest of the three tax years referred to in subsection (2) of section 72, with any remaining loss deducted from income of the next tax year and then from income of the third of those tax years. Any remaining loss is available for a different loss relief claim.

### ***Section 74: Restrictions on relief unless trade is commercial etc***

276. This section denies early trade loss relief in relation to trades which are not commercial. It is based on section 381(4), (5) and (7) of ICTA.
277. *Subsection (2)* provides that whether the trade is commercial is determined by reference to the basis period for the tax year, rather than by reference to the tax year as in the source legislation. There is a similar provision in section 66. See *Change 9* in Annex 1.
278. *Subsection (3)* provides for the case where the trade is carried on as part of a larger undertaking. In such a case the larger undertaking (that is the undertaking as a whole) may be carried on with a view to the realisation of profits even if the smaller trade is not.

### ***Section 75: Trade leasing allowances given to individuals***

279. This section denies sideways relief in relation to losses derived from trade leasing allowances if the individual carrying on the trade does not meet the time commitment test. It is based on section 384(6) and (7) of ICTA.
280. *Subsection (2)* defines a “trade leasing allowance”.
281. The time commitment test requires that conditions A and B are met.

282. *Subsection (5)* sets out condition A. Its reference to “a continuous period of at least 6 months beginning or ending in the basis period for the tax year in which the loss was made” covers cases of a commencement or a cessation of the trade. In such cases the basis period may be shorter than six months.
283. *Subsection (6)* sets out condition B. Its reference to “a continuous period of at least 6 months beginning or ending in the loss-making basis period” also covers cases of a commencement or a cessation of the trade. In such cases the basis period may be shorter than six months.
284. The section removes an inconsistency in the source legislation between:
- the period during which substantially the whole of the individual’s time must be devoted to carrying on the trade;
  - the period during which the individual must carry on the trade; and
  - the basis period in respect of which the loss is calculated.
285. The inconsistency arose because of the change from the preceding year basis of assessment to the current year basis of assessment, made by FA 2004. This change resulted in losses being calculated by reference to basis periods ending in a tax year while the time commitment test continued to relate to the tax year itself. This section provides that the time commitment test also relates to the basis period in which the loss is made. See *Change 10* in Annex 1.

#### ***Section 76: First-year allowances: introduction***

286. This section denies sideways relief for any part of the loss that derives from a first-year allowance in the circumstances set out in either section 77 or section 78. It is based on section 384A(1) of ICTA.

#### ***Section 77: First-year allowances: partnerships with companies***

287. This section sets out the first circumstance in which section 76 may deny sideways relief for part of a loss. It is based on section 384A(2) and (3) of ICTA.

#### ***Section 78: First-year allowances: arrangements to reduce tax liabilities***

288. This section sets out the second circumstance in which section 76 may deny sideways relief for part of a loss. It is based on section 384A(4) and (5) of ICTA.

#### ***Section 79: Capital allowances restrictions: supplementary***

289. This section supplements sections 76 to 78. It is based on sections 384(8) and (11) and 384A(6) and (8) of ICTA.

#### ***Section 80: Ring fence income***

290. This section provides that sideways relief in respect of a trading loss cannot be given against income arising from oil extraction activities or oil rights, unless the loss also arises from such activities or rights. It is based on sections 492(2) and 502(1) of ICTA.

#### ***Section 81: Dealings in commodity futures***

291. This section denies sideways relief for a loss made by a person in a trade of dealing in commodity futures, where that person carries on the trade in partnership with a company and arrangements have been made to reduce a tax liability by means of sideways relief. It is based on section 399(2), (3) and (5) of ICTA.

***Section 82: Exploitation of films***

292. This section provides signposts to sections in Chapter 3 of Part 4 that provide for a restriction on loss relief if an individual carries on a trade as a partner in certain types of partnership, and to a section in Chapter 5 of Part 13 (avoidance involving trading losses). It is new.

***Section 83: Carry forward against subsequent trade profits***

293. This section provides carry-forward relief for trade losses. It is based on section 385(1) of ICTA and section 72(8) of FA 1991.
294. A person who makes a trading loss in a tax year may claim to carry it forward, to the extent that relief has not been given for it under any other provision.
295. The carry-forward trade loss can only be deducted from profits of the trade in which the loss arose. And a carry-forward trade loss must be deducted from the trading profits of a future tax year before those profits can be reduced by way of any other loss relief.

***Section 84: How relief works***

296. This section sets out the way in which deductions for the carry-forward trade loss are to be made. It is based on section 385(1) of ICTA.

***Section 85: Use of trade-related interest and dividends if trade profits insufficient***

297. This section provides that certain interest and dividends are treated as trade profits if the profits are otherwise insufficient to use some or all of a carry-forward trade loss. It is based on section 385(4) of ICTA.
298. Interest and dividends are normally taxed separately from trade profits so, in the absence of this provision, a carry-forward trade loss could not be set against such income. But it is only interest and dividends that would otherwise be treated as receipts of the trade that can attract this treatment.
299. The source legislation refers to interest or dividends on investments arising in that year – meaning interest or dividends arising in the year from investments. But as interest and dividends can only arise from investments, the word “investments” has been dropped, just as it was when earlier legislation was consolidated in ICTA for the purposes of terminal loss relief. See the commentary on section 92.

***Section 86: Trade transferred to a company***

300. This section provides for certain cases in which an individual’s carry-forward trade losses may be used against income that the individual derives from a company to which the trade has been transferred and in which that individual was allotted shares. It is based on section 386(1) and (3) of ICTA.
301. Section 386(2) of ICTA has not been rewritten. See *Change 11* in Annex 1.

***Section 87: Ring fence trades***

302. This section provides that a loss in a tax year derived from oil-related activities can be deducted from the profits of a trade in a future tax year so far as the profits are derived from activities which would be treated as part of the same trade as the oil-related activities but for the ring-fencing rules. It is based on section 492(4) of ICTA.

***Section 88: Carry forward of certain interest as loss***

303. This section provides for cases where interest paid by an individual in a tax year, and eligible for relief under certain provisions, may be treated as a loss qualifying for carry-forward trade loss relief. It is based on section 390 of ICTA.

304. The interest must be incurred wholly and exclusively for the purpose of a trade, profession or vocation carried on wholly or partly in the United Kingdom and there must be insufficient income for relief to be given under Chapter 1 of Part 8.

***Section 89: Carry back of losses on a permanent cessation of a trade***

305. This section provides for terminal trade loss relief. It is based on section 388(1) of ICTA.
306. A claim for terminal trade loss relief may be made by a person who permanently ceases to carry on a trade if the person makes a loss in the trade in the final tax year or in the previous tax year. But only that part of a loss from the previous tax year that falls within a period starting 12 months before the cessation is available for this purpose.
307. If a claim is made the full amount of the terminal losses, or as much of them as possible, must be used to reduce the trading profits of the final tax year and the three previous tax years.
308. *Subsection (3)* omits the concept, in section 388(1) of ICTA, of the trading profits having been “charged” to income tax. See *Change 12* in Annex 1.
309. Section 388(5) of ICTA, which is concerned with the interaction between terminal loss relief and charges on income, is not rewritten. This is linked to the approach adopted by this Act to the rules in ICTA about charges on income. The Act gives relief for the payments concerned as a deduction in computing net income, and repeals section 387 of ICTA and section 51 of ITTOIA. See *Change 81* in Annex 1.

***Section 90: Losses that are “terminal losses”***

310. This section sets out how terminal losses are to be calculated. It is based on section 388(6) of ICTA.
311. The relievable loss is calculated by adding (a) any loss in the final tax year to (b) any loss in the part of the previous tax year falling within 12 months of the date of cessation. Each of these losses is called a terminal loss. If a profit arises in either of the periods, it is ignored.
312. *Subsections (2) to (4)* provide that profits or losses for each of these terminal loss periods are calculated by allocating profits or losses of periods of account to them. *Subsection (5)* makes it explicit how any deduction allowed for overlap profit arising under section 205 of ITTOIA is taken into account. *Subsection (6)* makes explicit provision in relation to partnerships. See *Change 12* in Annex 1.

***Section 91: How relief works***

313. This section sets out the way in which terminal trade loss relief is given. It is based on section 388(3) of ICTA.

***Section 92: Use of trade-related interest and dividends if trade profits insufficient***

314. This section provides that certain interest and dividends are treated as trade profits if the profits are otherwise insufficient to use some or all of a terminal trade loss. It is based on section 388(4) of ICTA.
315. Interest and dividends are normally taxed separately from trade profits so, in the absence of this provision, a terminal trade loss could not be set against such income. But it is only interest and dividends that would otherwise be treated as receipts of the trade that can attract this treatment.
316. The provisions on which the source legislation is based referred to interest or dividends on investments arising in that year, meaning interest or dividends arising in the year from investments. But as interest and dividends can only arise from investments, the word “investments” was dropped when earlier legislation was consolidated in ICTA.

***Section 93: Mineral extraction trade and carry back of balancing allowances***

317. This section provides that a terminal trade loss relief claim takes precedence over a claim for balancing allowances in circumstances in which both are claimed on the cessation of a mineral extraction trade. It is based on section 389(2) of ICTA.

***Section 94: Carry back of certain interest as loss***

318. This section provides that where an individual has paid interest in a tax year which is eligible for relief, but is unable to utilise the deduction in full, the amount remaining may be treated for the purposes of terminal trade loss relief as a trade loss made at the date of payment, provided the interest is incurred wholly and exclusively for the purposes of a trade carried on wholly or partly in the United Kingdom. It is based on section 390 of ICTA.

***Section 95: Foreign trades etc: reliefs only against foreign income***

319. This section provides that losses arising from trades carried on wholly outside the United Kingdom can only be used to reduce profits from certain categories of foreign income, depending on the type of relief being claimed. It is based on section 391 of ICTA.
320. *Subsection (2)(c)* makes it explicit that losses arising from trades carried on wholly outside the United Kingdom are not available for use for capital gains tax purposes. See *Change 13* in Annex 1.

***Section 96: Post-cessation trade relief***

321. This section provides relief for certain payments made, or certain losses on debts made, after a trade has ceased (and for which relief would not otherwise be available). It is based on section 109A(1) and section 110(1A) and (1B) of ICTA.
322. A claim for post-cessation trade relief is possible if a person ceases carrying on a trade and within seven years makes a qualifying payment (see section 97) or a qualifying event occurs in relation to a debt of the trade owed to the person (see section 98).

***Section 97: Meaning of “qualifying payment”***

323. This section sets out the meaning of qualifying payment. It is based on section 109A(2) of ICTA.

***Section 98: Meaning of “qualifying event” etc***

324. This section sets out the meaning of a qualifying event occurring in relation to a debt owed to the person concerned and the amount that may be relievable in relation to such an event. It is based on section 109A(4) and (4A) of ICTA.
325. The source legislation treated the release of a debt or the occasion of a debt proving to be bad as if it were a payment which qualified as post-cessation expenditure. These sections are structured so that such deeming is not needed.
326. *Subsection (2)(c)* refers to a debt being released as part of a statutory insolvency arrangement. This term is defined by reference to section 259 of ITTOIA. The source legislation used the term “relevant scheme or arrangement”. See *Change 14* in Annex 1.

***Section 99: Reduction of relief for unpaid trade expenses***

327. This section reduces post-cessation trade relief by reference to expenses claimed as a deduction in computing trading profits, but which were unpaid at the time that the trade ceased. It is based on section 109A(5) of ICTA.



328. The section provides that post-cessation trade relief is reduced by the amount of the expenses that are still unpaid at the end of the tax year in question, but that the reduction shall not include any amount taken into account as a reduction in a previous tax year. And it adds that any such expenses paid subsequently are to be treated as a qualifying payment.

***Section 100: Prohibition against double counting***

329. This section prevents a person from claiming post-cessation trade relief for an amount for which relief is given or available under other provisions of the Income Tax Acts. It is based on section 109A(6) of ICTA.

***Section 101: Treating excess post-cessation trade relief as CGT loss***

330. This section is a signpost to a capital gains tax relief that may be available where there is insufficient income to absorb an amount claimed by way of post-cessation trade relief. It is new.

***Chapter 3: Restrictions on trade loss relief for certain partners***

**Overview**

331. This Chapter sets out restrictions on trade loss relief that apply in certain cases where an individual carries on a trade as a member of a partnership. The restrictions do not apply to persons other than individuals, or in relation to professions.
332. The main restrictions are on deducting trading losses from income (other than income from the trade) or capital gains. Broadly, the amount of such deductions must not exceed the amount that the individual stands to lose commercially.
333. In various places, source legislation expresses the amount that a partner stands to lose commercially by reference to the partner's contribution to the trade that a partnership carries on (the "contribution to the trade"). But, in such cases, the amount that a partner stands to lose commercially is more likely to be reflected in the partner's contribution to the partnership that carries on the trade.
334. So this Chapter, and Chapter 5 of Part 13 (avoidance involving trading losses), makes a change by expressing the amount that a partner stands to lose commercially in terms of the partner's contribution to the partnership (the "contribution to the firm"). The change to contribution to the firm requires that the possibility of there being partnerships with more than one trade is addressed by the change. And for consistency with other partnerships, the possibility of a limited liability partnership carrying on more than one trade is also addressed. This change affects many sections in this Chapter and it also makes a number of other clarifications as to what is included in a partner's contribution. See *Change 16* in Annex 1.

***Section 102: Overview of Chapter***

335. This section introduces the Chapter. It is new.
336. *Subsection (1)* is a signpost to the main restrictions, which apply in certain cases where the individual is a limited partner, a member of a limited liability partnership or a non-active partner.
337. *Subsection (2)* is a signpost to a further restriction applying where the trade consists of or includes the exploitation of films.
338. *Subsections (3)* and *(4)* provide signposts to sections in Chapter 5 of Part 13 (avoidance involving trading losses).

***Section 103: Meaning of “sideways relief”, “capital gains relief” and “firm”***

- 339. This section defines these terms. It is new.
- 340. The definition of “capital gains relief” refers to section 261B of TCGA, which is inserted by Schedule 1 to this Act.

***Section 104: Restriction on reliefs for limited partners***

- 341. This section restricts the use of a trade loss made in a tax year by an individual carrying on the trade as a limited partner. It is based on section 117(1) and (2) of ICTA.
- 342. Sideways relief or capital gains relief for the trade loss, combined with other relevant relief, must not exceed the individual’s contribution to the firm.
- 343. The interaction between section 72 of FA 1991 and section 117 of ICTA is made explicit. See *Change 13* in Annex 1.
- 344. The individual’s contribution to the firm is measured at the end of the basis period for the relevant tax year, rather than at the end of the tax year as in the source legislation. See *Change 15* in Annex 1.
- 345. There is a change from “contribution to the trade” in the source legislation to “contribution to the firm”. See the overview commentary on this Chapter and *Change 16* in Annex 1.

***Section 105: Meaning of “contribution to the firm”***

- 346. This section sets out details of what is included in determining the contribution to the firm. It is based on section 117(3) and (5) of ICTA.
- 347. There is a change from “contribution to the trade” in the source legislation to “contribution to the firm”. See the overview commentary on this Chapter and *Change 16* in Annex 1.
- 348. The individual’s contribution of capital to the firm is reduced by any amounts drawn out or received back. *Subsection (5)* provides an exception. The exception is for an amount drawn out or received back which is treated as income chargeable to income tax. This exception is similar to the one in section 111(5), based on section 118ZG(5) of ICTA. See *Change 17* in Annex 1.

***Section 106: Meaning of “limited partner”***

- 349. This section defines “limited partner”. It is based on section 117(2) of ICTA.
- 350. A limited partner of a limited partnership registered under the Limited Partnerships Act 1907 is someone who is not entitled to take part in the management of the firm’s business and is not liable for the debts or obligations of the firm beyond a certain limit. And a limited partner of any other firm is someone who is similarly not entitled to take part in management and not liable for debts or obligations in accordance with the rules applying to the firm in question.
- 351. *Subsection (4)* is introduced as part of drafting in terms of an individual’s “contribution to the firm” in place of “contribution to the trade”. See *Change 16* in Annex 1.

***Section 107: Restriction on reliefs for members of LLPs***

- 352. This section restricts the use of a trade loss made in a tax year by an individual carrying on a trade as a member of a limited liability partnership (LLP). It is based on sections 117(1) and (2) and 118ZB(1) and (2) of ICTA.
- 353. Sideways relief or capital gains relief for the trade loss, combined with other relevant relief, must not exceed the individual’s “contribution to the LLP”.

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- 354. The interaction between section 72 of FA 1991 and section 117 of ICTA is made explicit. See *Change 13* in Annex 1.
- 355. The individual's contribution to the LLP is measured at the end of the basis period for the relevant tax year, rather than at the end of the tax year as in the source legislation. See *Change 15* in Annex 1.
- 356. There is a change from "contribution to the trade" in the source legislation to "contribution to the firm". See the overview commentary on this Chapter and *Change 16* in Annex 1.

### ***Section 108: Meaning of "contribution to the LLP"***

- 357. This section sets out details of what is included in determining the contribution to the LLP. It is based on sections 118ZB(1) and 118ZC of ICTA.
- 358. An LLP formed under the Limited Liability Partnerships Act 2000 is an entity with separate legal personality. That Act defines what is meant by contribution to the limited liability partnership.
- 359. There is a change from "contribution to the trade" in the source legislation to "contribution to the firm". See the overview commentary on this Chapter and *Change 16* in Annex 1.
- 360. The individual's contribution of capital to the LLP is reduced by any amounts drawn out or received back. *Subsection (6)* provides an exception. The exception is for an amount drawn out or received back which is treated as income chargeable to income tax. This exception is similar to the one in section 111(5), based on section 118ZG(5) of ICTA. See *Change 17* in Annex 1.

### ***Section 109: Unrelieved losses brought forward***

- 361. This section specifies how the amount of any loss, which could not be relieved because of section 107, may be brought forward for use in a later tax year in which the individual continues to carry on the trade as a member of an LLP. It is based on sections 118ZD and 118ZM(8) of ICTA.
- 362. The section treats the unrelieved loss as a trading loss of the later tax year, unless it is an excluded loss (see *subsection (3)*).
- 363. The interaction between section 72 of FA 1991 and section 117 of ICTA is made explicit in section 107, to which this section refers. See *Change 13* in Annex 1.

### ***Section 110: Restriction on reliefs for non-active partners in early tax years***

- 364. This section restricts the use of trade losses made by an individual carrying on a trade as "a non-active partner" in an "early tax year". It is based on sections 118ZE and 118ZF of ICTA.
- 365. A non-active partner is an individual who does not devote a significant amount of time to the trade and is not a limited partner. See section 112.
- 366. Sideways relief or capital gains relief for the trade loss, combined with other relevant relief, must not exceed the individual's "contribution to the firm".
- 367. The restriction applies only to losses made in the first tax year in which the individual carries on the trade or in any of the next three tax years. See section 112(6).
- 368. The interaction between section 72 of FA 1991 and section 118ZE of ICTA is made explicit. See *Change 13* in Annex 1.

369. The individual's contribution to the firm is measured at the end of the basis period for the relevant tax year, rather than at the end of the tax year as in the source legislation. See *Change 15* in Annex 1.
370. There is a change from "contribution to the trade" in the source legislation to "contribution to the firm". See the overview commentary on this Chapter and *Change 16* in Annex 1.
371. *Subsection (8)* disapplies the rules in the case of losses from a trade of underwriting at Lloyd's. Lloyd's underwriters are subject to a specific tax regime which reflects the nature of the business and the partners' liabilities for the underwriting losses.

### ***Section 111: Meaning of "contribution to the firm"***

372. This section sets out details of what is included in determining the individual's contribution to the firm. It is based on section 118ZG of ICTA.
373. There is a change from "contribution to the trade" in the source legislation to "contribution to the firm". See the overview commentary on this Chapter and *Change 16* in Annex 1.
374. The definition differs slightly from the definition of "contribution to the firm" for limited partners. The definition for a non-active partner includes a reference to any additional amount contributed on a winding-up, whereas the definition for a limited partner includes no such reference, as a limited partner is under no obligation to contribute any amounts beyond the amount originally agreed as the required contribution.

### ***Section 112: Meaning of "non-active partner" and "early tax year" etc***

375. This section sets out details of who is carrying on a trade as a non-active partner in an early tax year. It is based on sections 118ZE, 118ZH and 118ZM of ICTA.
376. The definition excludes limited partners. So only a general partner (that is, a partner other than a limited partner) or a member of an LLP may be a non-active partner.
377. In broad terms, a non-active partner is an individual who does not devote a significant amount of time to the trade and is, therefore, unlikely to be anything more than a financial investor.
378. *Subsection (2)* provides that a significant amount of time is taken as being a minimum of ten hours per week, on average taken across the period.
379. *Subsections (3)* and *(4)* define the "relevant period" for the purposes of subsection (2) as the whole of the basis period for the tax year, or a continuous period of at least six months either beginning with the date of commencement or ending with the date of cessation. For example, if an individual commences a trade on 1 April 2007, the basis period for 2006-07 is 1 April 2007 to 5 April 2007. And the relevant period ends on 30 September 2007 for the purposes of this section in relation to the tax year 2006-07. So the individual must meet the "significant amount of time" test for six months rather than just for five days.
380. *Subsection (5)* provides that where relief is given but the activity rules prove not to be satisfied, relief is withdrawn by making an assessment under this section.

### ***Section 113: Unrelieved losses brought forward***

381. This section specifies how the amount of any loss, which could not be relieved because of section 110, may be brought forward for use in a later tax year in which the individual continues to carry on the trade as a partner (or contributes to the firm on its winding up). It is based on sections 118ZI and 118ZM of ICTA.

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

- 382. The section treats the unrelieved loss as a trading loss of the later tax year unless it is an excluded loss (see *subsection (4)*).
- 383. The interaction between section 72 of FA 1991 and section 118ZE of ICTA is made explicit in section 110, to which this section refers. See *Change 13* in Annex 1.
- 384. The section reflects the contribution to the firm being measured at the end of the basis period for a tax year, rather than at the end of the tax year as in the source legislation. See *Change 15* in Annex 1.

#### ***Section 114: Exclusion of amounts in calculating contribution to the firm or LLP***

- 385. This section enables regulations, which can apply on a retrospective basis, to exclude certain amounts from the calculation of the contribution to the firm or LLP. It is based on section 118ZN of ICTA.
- 386. Regulations made under this section are subject to the affirmative resolution procedure.
- 387. There is a change from “contribution to the trade” in the source legislation to “contribution to the firm”. See the overview commentary on this Chapter and *Change 16* in Annex 1.
- 388. Some regulations have been made under section 118ZN of ICTA, with effect from 22 July 2005. See the [Partnerships \(Restrictions on Contributions to a Trade\) Regulations 2005 \(SI 2005/2017\)](#). See also the commentary on Part 5 of Schedule 2 about consequential amendments made to these regulations by this Act.
- 389. In *subsection (4)*, the reference to Act includes references to Acts of the Scottish Parliament and Northern Ireland legislation. See section 1018 and *Change 152* in Annex 1.

#### ***Section 115: Restrictions on reliefs for firms exploiting films***

- 390. This section extends the restriction on the use of sideways relief and capital gains relief to (effectively) non-active partners carrying on a trade that exploits films, where there is a relevant agreement that guarantees the individual an amount of income. It is based on sections 118ZL and 118ZM of ICTA.
- 391. The interaction between section 72 of FA 1991 and section 118ZL of ICTA is made explicit. See *Change 13* in Annex 1.

#### ***Section 116: Exclusion from restrictions under section 115: certain film expenditure***

- 392. This section specifies that the restriction under the previous section does not apply to the extent any loss qualifying for relief derives from unrestricted film expenditure. It is based on sections 118ZL and 118ZM of ICTA.

### ***Chapter 4: Losses from property businesses***

#### **Overview**

- 393. This Chapter provides relief for losses from property businesses.

#### ***Section 117: Overview of Chapter***

- 394. This section provides an overview of the Chapter. It is new.
- 395. *Subsection (1)* lists the types of relief available for property losses and refers to the various sections where the details of the reliefs and associated miscellaneous provisions can be found.

396. *Subsection (2)* highlights the fact that a UK property business, so far as it consists of the commercial letting of furnished holiday accommodation, is treated as a trade for loss relief purposes.

***Section 118: Carry forward against subsequent property business profits***

397. This section provides relief for property losses against property business income of later years. It is based on sections 379A and 379B of ICTA.
398. Section 272 of ITTOIA specifies that the same rules apply in calculating profits and losses of a property business as apply for calculating profits and losses of a trade. So rewriting section 379A(7) of ICTA is unnecessary. See the reference to section 272 of ITTOIA in section 59.

***Section 119: How relief works***

399. This section explains how the deductions are made. It is based on sections 379A(1) and 379B of ICTA.

***Section 120: Deduction of property losses from general income***

400. This section provides relief for property losses against general income, if the loss has a capital allowances or relevant agricultural connection. It is based on sections 379A and 379B of ICTA.

***Section 121: How relief works***

401. This section explains how the deductions are made. It is based on sections 379A and 379 B of ICTA.

***Section 122: Meaning of “the applicable amount of the loss”***

402. This section defines “the applicable amount of the loss”, with the effect that a claim by a person for property loss relief against general income is restricted to the lesser of the loss itself and the amount arising from the relevant connection. It is based on sections 379A(4) and 379B of ICTA.

***Section 123: Meaning of “the loss has a capital allowances connection” and “the business has a relevant agricultural connection”***

403. This section defines the meaning of “the loss has a capital allowances connection” and “the business has a relevant agricultural connection”. It is based on section 379A and 379B.

***Section 124: Supplementary***

404. This section provides the time limit for making a claim under section 120 and supplementary matters if a claim is made. It is based on sections 379A(3) and 379B of ICTA.

***Section 125: Post-cessation property relief***

405. This section provides relief for payments of certain expenses etc after a property business has ceased (and for which relief would not otherwise be available). It is based on section 109A and section 110 of ICTA.
406. A claim for post-cessation property relief is possible if a person ceases carrying on a UK property business and within seven years makes a qualifying payment (see section 97) or a qualifying event occurs in relation to a debt of the business (see section 98).

***Section 126: Treating excess post-cessation property relief as CGT loss***

407. This section is a signpost to a capital gains tax relief that may be available where there is insufficient income to absorb an amount claimed by way of post-cessation property relief. It is new.

***Section 127: UK furnished holiday lettings business treated as trade***

408. This section provides, subject to modifications, the same range of reliefs for a loss from a UK furnished holiday lettings business as is available for a trade loss. It is based on section 504A of ICTA.
409. *Subsection (4)* applies Chapter 2 (trade losses) with the omission of the section restricting the availability of trade leasing allowances, as an individual letting furnished holiday accommodation cannot lease out equipment as part of that business.
410. *Subsections (5) and (6)* deny early trade loss relief to an individual in respect of a tax year if any of the accommodation was first let by the individual as furnished accommodation more than three years before the start of the tax year.

***Chapter 5: Losses in an employment or office***

**Overview**

411. This Chapter provides relief for losses in an employment or office.

***Section 128: Employment loss relief against general income***

412. This section provides relief for a person's losses in an employment or office. It is based on section 380(1) of ICTA.
413. The reference to "office" is new, but reflects the long-standing HMRC practice of allowing the holder of an office to set off losses against general income. See *Change 18* in Annex 1.
414. Section 384A of ICTA restricts relief under section 380 of ICTA in relation to avoidance schemes entered into by individuals carrying on a leasing trade, or another qualifying activity, and involving first-year allowances. See section 76.
415. As section 380 of ICTA provides relief for losses in an employment (as well as in a trade) the restriction in section 384A of ICTA is, in principle, applicable to an employment loss.
416. In view of the remote possibility of section 384A of ICTA ever applying to employment losses, this section is not subject to a restriction equivalent to that in section 76. See *Change 19* in Annex 1.

***Section 129: How relief works***

417. This section explains how deductions are made. It is based on section 380(1) and (2) of ICTA.
418. *Subsections (2) and (3)* provide that, if claims are made in respect of employment losses incurred in successive tax years and both claims specify that the relief is to be given against income of the same tax year, the claim in respect of the loss in the earlier year takes priority.
419. *Subsection (4)* makes it explicit that this rule also operates in relation to the interaction between claims for employment losses and those for trade losses.

### ***Section 130: Treating loss in employment or office as CGT loss***

420. This section is a signpost to a capital gains tax relief that may be available where there is insufficient income to absorb an amount claimed by way of employment loss relief. It is new.

### ***Chapter 6: Losses on disposal of shares***

#### **Overview**

421. This Chapter is based on sections 305A and 574 of ICTA and, to the extent that they supplement section 574 of that Act, sections 575 and 576 of that Act. So far as sections 575 and 576 of ICTA supplement section 573 of that Act (share loss relief for companies), they continue in force, together with new sections 576A to 576L of ICTA (see Schedule 1 to this Act and the commentary on those new sections of ICTA).
422. Section 574 of ICTA provides for relief against income tax for allowable losses for capital gains tax purposes incurred on the disposal of ordinary shares in qualifying trading companies for which an individual has subscribed.
423. Section 305A of ICTA provides that section 574 of that Act also applies, with minor modifications, on the disposal by an individual of shares to which enterprise investment scheme income tax relief is attributable under Chapter 3 of Part 7 of ICTA. The provisions of section 305A of ICTA are included as an integral part of this Chapter and a signpost to this Chapter is included in section 161 in Part 5 (Enterprise investment scheme).
424. Section 125A of TCGA introduced by Schedule 1 to this Act is based on section 576(2) and (3) of ICTA, which have effect only for the purposes of capital gains tax or corporation tax on chargeable gains, and on sections 573(4) and 574(1) of ICTA which have effect only for the purposes of corporation tax on chargeable gains and capital gains tax respectively. See the commentary on section 125A of TCGA in Schedule 1.
425. This Chapter contains 21 sections structured as follows:
- three setting out the basic conditions for share loss relief, the entitlement of the individual to make a claim and how the relief works;
  - thirteen applying only to shares to which EIS relief is not attributable and setting out requirements to be satisfied if relief is to be available on the disposal of such shares;
  - three applying generally and dealing with limits on relief and the identification of shares disposed of; and
  - two containing miscellaneous and supplementary provisions.

### ***Section 131: Share loss relief***

426. This section deals with eligibility for share loss relief and the requirements relating to the kinds of disposal and to the type of shares disposed of. It is based on sections 305A(1), 574(1) and 575(1) and (3) of ICTA.
427. *Subsection (1)(b)* provides that the disposal must be of “qualifying shares”. *Subsection (2)* provides that shares are qualifying shares if either EIS relief is attributable to them or they are shares in a qualifying trading company for which the individual has subscribed. EIS relief is defined in section 151(1) and includes not only relief under Part 5 of this Act attributable to shares issued on or after 6 April 2007 (see section 201) but also relief under Chapter 3 of Part 7 of ICTA attributable to shares issued after 31 December 1993 and before 6 April 2007 (see section 289B of that Act).
428. *Subsection (3)(a)* is based on section 575(1)(a) of ICTA which specifies as one of the kinds of disposal:



“a disposal by way of a bargain made at arm’s length for full consideration.

Subsection (3)(a) omits the words “for full consideration” on the basis that they add nothing. See *Change 20* in Annex 1.

### ***Section 132: Entitlement to claim***

429. This section deals with the making of a claim for share loss relief. It is based on section 574(1) of ICTA.
430. This section makes explicit what is only implicit in section 574(1) of ICTA:
- in *subsection (1)*, that a claim may be made for both the tax year in which the allowable loss is incurred and the previous tax year;
  - in *subsection (2)*, what is required in practice to establish how the claim is to apply to each year; and
  - in *subsection (3)*, that, in the case of a claim in respect of one year only, the claim must specify which year.

### ***Section 133: How relief works***

431. This section explains how deductions for the loss are to be made. It is based on section 574(1) and (2) of ICTA.
432. *Subsection (1)* states explicitly what is implicit in section 574(1) of ICTA, that:
- the whole amount of the loss must be deducted in calculating the claimant’s net income for the specified tax year; and
  - if a claim is made in respect of two tax years, then only so much, if any, of the amount of the loss which it has not been possible to deduct from the claimant’s income for the specified year can be deducted in calculating the claimant’s net income for the other year.
433. This section does not include the words in section 574(1)(a) and (b) of ICTA which limit the amount of the deduction for any tax year to the whole of the claimant’s income for the year, where the income is less than the amount of the loss. That limit is included in section 25(5) and (6). Section 25 explains how the reliefs listed in section 24, which include share loss relief, are to be deducted at Step 2 of section 23 in order to calculate the claimant’s net income.
434. *Subsection (5)* is new. It makes explicit that the balance of any allowable loss for which share loss relief is not obtained continues to be capable of being claimed as a deduction under TCGA.

### ***Section 134: Qualifying trading companies***

435. This section is the first of 13 sections which apply only to shares to which EIS relief is not attributable. It is based on section 576(4) of ICTA. It defines what is a qualifying trading company. Shares, other than shares to which EIS relief is attributable, must form part of the ordinary share capital of a qualifying trading company if they are to be qualifying shares (see section 131(2)(b) and the definition of “shares” in section 151(1) and (3) to (6)).
436. Section 576(4) of ICTA defines a “qualifying trading company” in terms of its being an “eligible trading company” and having been such for a specified continuous period. Section 576(4A) of ICTA defines an “eligible trading company” by applying the requirements of section 293 and other provisions of Chapter 3 of Part 7 of ICTA (Enterprise investment scheme) with modifications.

437. This section avoids the double layer of definition in section 576(4) of ICTA and omits the concept of an “eligible trading company”.
438. *Subsection (2)*, therefore, directly introduces the four requirements of section 293 of ICTA (as modified and applied by section 576(4A) and (4B) of that Act) which must be met on a continuing basis (see also *subsection (3)*).
439. Subsections (2)(b) and (3)(b) omit the words “that is not an eligible trading company” which qualify “trading company” in section 576(4)(a)(ii) and (b)(ii) of ICTA on which those paragraphs are based. Those words are otiose.
440. *Subsection (4)* directly introduces the two requirements of section 293 of ICTA (as modified and applied by section 576(4A) and (4B) of that Act) which are to be met only when the shares in respect of which share loss relief is claimed are issued.
441. This direct application of these two requirements resolves the apparent inconsistency between sections 293 and 576(4) of ICTA. Section 293 of ICTA requires them to be met only at the time of issue of the shares. But section 576(4) of that Act requires the company to be an eligible trading company at a subsequent time and during a continuous period. Section 576(4) of ICTA thus appears to require the company to meet these requirements also at that subsequent time and during that period.

### ***Section 135: Subscriptions for shares***

442. This section sets out the requirements relating to the subscription for shares in a qualifying trading company. It is based on section 574(3) of ICTA and includes a new provision relating to “corresponding bonus shares”.
443. *Subsection (2)* provides that shares are subscribed for by the individual if they have been issued to the individual in consideration of money or money’s worth. See also *subsection (4)*.
444. *Subsection (3)* is based on section 574(3)(b) of ICTA, which provides that:  
“an individual shall be treated as having subscribed for shares if his spouse or civil partner did so and transferred them to him by a transaction inter vivos.
445. Subsection (3)(a) is extended to cover not only the case where A is the actual subscriber but also cases where A is treated as having subscribed under the provisions relating to the issue of “corresponding bonus shares” (see *subsection (4)*) or under an earlier application of this subsection. See *Change 21* in Annex 1.
446. Subsection (3)(c), read with the definitions of “civil partner” and “spouse” in section 151(1), makes explicit that the relevant time at which A and B must be spouses or civil partners living together is the time of the transfer. See *Change 22* in Annex 1.
447. Subsection (4) is new and treats “corresponding bonus shares” issued in respect of shares which have been subscribed for as themselves having been subscribed for. See *Change 23* in Annex 1.

### ***Section 136: Disposals of new shares***

448. This section applies to the disposal of qualifying shares (other than shares to which EIS relief is attributable) which are identified by virtue of section 127 of TCGA with shares previously held by the individual. The section denies or restricts share loss relief unless certain conditions are met. It is based on section 575(2) of ICTA.
449. The cross-reference to section 145(3) at the end of *subsection (2)* makes clear that this section does not apply to an exchange of shares to which section 145(1) applies. See the commentary on section 145 and *Change 24* in Annex 1.

**Section 137: The trading requirement**

450. This section is the first of ten new sections relating to the requirements for a company to be a qualifying trading company. These sections replace the provisions of section 576(4A) and (4B) of ICTA which apply section 293 and certain associated provisions of Chapter 3 of Part 7 of that Act, with modifications and omissions.
451. All these sections correspond to sections in Part 5 of this Act (Enterprise investment scheme). So far as possible cross-references to sections of Part 5 have been minimised. Cross-references have, however, been retained where the material referred to is lengthy, for example the definition of “excluded activities” in sections 192 to 199.
452. This section corresponds to section 181 with modifications. Section 181 is based on section 293(2) and (3A) to (3F) of ICTA. Section 134(2) and (3) provide that this requirement must be met over a continuous period, which is the effect of the modification of section 293(2) of ICTA made by section 576(4A)(d) of that Act.
453. *Subsection (2)* corresponds to section 181(3) and *subsection (6)* corresponds to section 181(7). For the reason for the introduction of subsections (3) and (7) of section 181, see *Change 42* in Annex 1 and the commentary on section 181.
454. *Subsection (5)* corresponds to section 181(6), including the change made in section 181(6)(d) by *Change 41* in Annex 1.
455. In the definition of “incidental purposes” in *subsection (7)* the words “capable of”, which appear in the definition in section 293(2) of ICTA on which it is based, have been omitted. This mirrors the definition of “incidental purposes” in section 181(8), which is also based on the definition in section 293(2) of ICTA. See the commentary on section 181.
456. The definition of “non-qualifying activities” in *subsection (7)* includes the change affecting the definition of that term for the purposes of section 181(8) made by *Change 43* in Annex 1.

**Section 138: Ceasing to meet trading requirement because of administration or receivership**

457. This section corresponds to section 182 with two changes. Section 182 is based on section 293(4A) to (6) and (8A) of ICTA.
458. The first change modifies section 182(3) by substituting for the reference to “the end of period B” a reference to “the time that is relevant for the purposes of section 134(2)”. This is the substitution required by section 576(4A)(d) of ICTA to section 293(5) of that Act, on which section 182(3) is based.
459. The second change modifies section 182(4) by omitting the reference to dissolution and adding the condition that the company continues, during the winding up, to be a trading company. These are the modifications required by section 576(4A)(b) of ICTA to section 293(6) of that Act, on which section 182(4) is based.

**Section 139: The control and independence requirement**

460. This section corresponds to section 185 with modifications. Section 185 is based on section 293(8) and (8A) of ICTA. Section 134(2) and (3) provide that this requirement must be met over a continuous period, which is the effect of the modification of section 293(8) of ICTA made by section 576(4A)(d) of that Act.
461. *Subsections (1) to (3)* correspond to section 185, with the omission in subsections (1)(a) and (2)(a) of the words “at any time in period B” and the substitution in subsection (3) of a reference to section 145(3) for the reference to section 247(4). *Change 44* in Annex 1 relating to section 185(1)(a) is replicated in this subsection.

462. The term “control” is used in both subsection (1)(a) and subsection (2)(a)(ii). There is a definition of “control” in *subsection (4)*, which refers to section 416(2) to (6) of ICTA, but this applies only to the use of that term in subsection (1)(a). This reflects section 257(3), which applies the definition of “control” in section 416(2) to (6) of ICTA in section 185(1)(a) but not in section 185(2)(a)(ii). By virtue of section 1021(2), the term “control” in sections 139(2)(a)(ii) and 185(2)(a)(ii) has the meaning given by section 995.

***Section 140: The qualifying subsidiaries requirement***

463. This section corresponds to section 187 with modifications. Section 187 is based on sections 293(3A) and 308(1) and (5A) of ICTA. Section 134(2) and (3) provide that this requirement must be met over a continuous period. This, together with the omission of the words “at any time in period B”, gives effect to the modification of sections 293(3A) and 308(1) of ICTA made by section 576(4A)(d) of that Act.

***Section 141: The property managing subsidiaries requirement***

464. This section corresponds to section 188 with modifications. Section 188 is based on section 293(6ZA) to (6ZC) and (8A) of ICTA. Section 134(2) and (3) provide that this requirement must be met over a continuous period. This, together with the omission of the words “at any time in period B”, gives effect to the modification of section 293(6ZA) of ICTA made by section 576(4A)(d) of that Act.

***Section 142: The gross assets requirement***

465. This section corresponds to section 186 with modifications. Section 186 is based on section 293(6A) to (6C) of ICTA. This requirement has to be met only at the times specified in *subsections (1) and (2)* (see section 134(4)(a)).
466. Section 576(4A)(c) of ICTA requires that for the words “the eligible shares” in section 293(6A) of that Act there be substituted the words “the shares in respect of which the share loss relief is claimed under section ... 574”. This substitution has been reflected in subsections (1)(a) and (2)(a). Section 150 applies for the purposes of those paragraphs to determine the time of issue of the shares in certain circumstances.

***Section 143: The unquoted status requirement***

467. This section corresponds to section 184 with modifications. Section 184 is based on sections 293(1A), (1B) and (8A) and 312(1), (1B), (1C) and (1E) of ICTA. This requirement has to be met only at the time specified in *subsection (1)* (see section 134(4)(b)).
468. Subsection (1) corresponds to section 184(1) with the substitution for “the beginning of period B” of “the time at which the shares in respect of which the share loss relief is claimed are issued”. This is the substitution required by section 576(4A)(ab) of ICTA to section 293(1A) of that Act, on which section 184(1) is based. Section 150 applies for the purposes of this subsection to determine the time of issue of the shares in certain circumstances.
469. In subsection (1)(c)(i) a reference to section 145 is substituted for the reference in section 184(1)(c)(i) to section 247.

***Section 144: Power to amend requirements by Treasury order***

470. This section is included to enable sections 137 to 143 to be amended by Treasury order whenever the corresponding sections in Part 5 are amended by such an order under the power in section 200. It is based on sections 298(4) and 576(4A) of ICTA.
471. This preserves the position under the source legislation if an amendment were made under the power in section 298(4) of ICTA. In the case of an amendment of a provision

which is applied by section 576(4A) of ICTA, the amendment would also have effect for the purposes of section 574 of that Act.

***Section 145: Relief after an exchange of shares for shares in another company***

472. This section corresponds to section 247 with modifications. Section 247 is based on section 304A(1), (2), (6), (7) and (8) of ICTA.
473. Section 576(4A)(e) of ICTA requires that for the words “eligible shares” in section 304A(1)(e)(i) of that Act there are substituted the words “shares in respect of which relief is claimed under section ... 574”. Those words are not entirely apposite, as the relief will be claimed, if at all, in respect of the new shares not the old shares.
474. Section 304A(1)(e)(i) of ICTA is needed in the context of EIS relief (see section 247(1)(e)(i)). But that provision is unnecessary in the context of share loss relief. Section 576(4A)(a) and (4B)(d) require the omission of section 304A(1)(e)(ii) of that Act. Accordingly, section 247(1)(e) has not been replicated in this section.
475. The provision in *subsection (1)(e)* has been based on paragraph 8(1)(f) of Schedule 5B to TCGA (Enterprise investment scheme: re-investment) rather than section 304A(1)(f) and (8) of ICTA. Accordingly, section 247(2), which is based on section 304A(8) of ICTA, has not been replicated in this section. See *Change 25* in Annex 1.
476. *Subsection (3)* corresponds to section 247(4) with two modifications.
477. *Subsection (3)(a)* is new and resolves the apparent conflict between section 136 and this section. See *Change 24* in Annex 1.
478. In *subsection (3)(b)* reference to section 139(1) has been substituted for the reference in section 247(4) to section 185.

***Section 146: Substitution of new shares for old shares***

479. This section corresponds to section 249 with modifications. Section 249 is based on section 304A(3) and (4) of ICTA.
480. **Section 249** makes separate provision for circumstances where the shares are held by the individual who subscribed for them and for circumstances where the shares have been transferred to the individual by the individual’s spouse or civil partner.
481. The structure of section 249 is dictated by the differing forms of subsections (2)(d) and (4)(d) which are based on section 304A(3)(d) and (4)(d) of ICTA. The difference between those provisions is necessary for the purposes of EIS relief. But section 576(4B)(d) of ICTA requires that section 304A(3)(d) and (4)(d) of that Act are omitted in the application of section 304A for the purposes of share loss relief.
482. **Section 135** provides that references in this Chapter to an individual having subscribed for shares include, in relation to shares to which EIS relief is not attributable, references to the individual being treated as having subscribed for shares for which the individual’s spouse or civil partner subscribed. The structure of section 146 is, therefore, simpler than that of section 249.
483. *Subsection (1)* corresponds to section 249(1) and (3), with the omission, as required by section 574(4B)(d) of ICTA, of the words “to which EIS relief becomes attributable under section 247” and with two further changes.
484. The first of these changes is that the words “and issued to” in section 249(1) have not been reproduced having regard to the meaning given to “subscribed for” by section 135(2).
485. The second of these changes is that the words “or by a nominee for an individual” have been added. These words reflect so much of section 250(1) as relates to the holding

or disposal of shares by a nominee for an individual. In this way, the requirements of section 135 relating to the subscription for the shares by the individual are preserved, while recognising that the individual may have subsequently transferred the shares into the name of a nominee for the individual.

486. *Subsection (2)(a) and (b)* correspond to section 249(2)(a) and (b) and (4)(a) and (b), with the substitution of “this Chapter” for “this Part”. As required by section 576(4B) (d) of ICTA, section 249(2)(c) and (d) and (4)(c) and (d) are not reproduced in this subsection. Section 150 applies for the purposes of subsection (2)(b) to determine the time of issue of the shares in certain circumstances.
487. *Subsection (2)(c)* is new. It expressly sets out the effect of sections 145 and 146. This is that, in determining whether the shares in the new company are, on their disposal, qualifying shares, any requirements of this Chapter for the new company to be a qualifying trading company which were met by the old company before the exchange are to be treated as met by the new company.

### ***Section 147: Limits on share loss relief***

488. This section deals with the calculation of the amount of share loss relief. It is based on section 576(1) of ICTA. It is the first of a group of three sections which apply generally for the purposes of this Chapter.
489. Section 576(1) of ICTA provides that, if a person disposes of shares for which the person has subscribed and which form part of a holding, the share loss relief in relation to those shares is not to exceed the sums which would have been allowable as deductions in computing the allowable loss for capital gains tax purposes if the shares had not formed part of the holding.
490. To cater for the abolition of pooling in relation to shares issued on or after 6 April 1998 and the changes in section 148 described in *Change 29* in Annex 1, section 147 refines the circumstances in which the provision applies. See *Change 26* in Annex 1.
491. *Subsection (8)* explains what is meant by shares “that are not capable of being qualifying shares” for the purposes not only of this section but also of section 148. *Change 27* in Annex 1 contains a detailed explanation of why a mixed holding is defined for the purposes of section 148 in terms of a holding which includes such shares.
492. *Subsection (9)* extends this meaning for the purposes only of *subsection (5)* to cover reorganisations involving the issue of shares of a different class.

### ***Section 148: Disposal of shares forming part of mixed holding***

493. This section deals with the identification of shares disposed of where those shares form part of a “mixed holding”. It is based on section 576(1) to (1B) and (5) of ICTA, with a number of changes.
494. Section 576(1) of ICTA defines a mixed holding as one which comprises shares for which a person has subscribed and shares which the person has acquired otherwise than by subscription.
495. *Subsection (1)* provides that this section applies to a holding in which some only of the shares are shares “that are not capable of being qualifying shares” (as defined in section 147(8)). See *Change 27* in Annex 1 which contains a detailed explanation of why a mixed holding has been defined in terms of a holding which includes such shares.
496. *Subsection (2)* provides that the section applies for the purpose of answering the questions:
- whether the shares disposed of are qualifying shares; and
  - which of any qualifying shares acquired at different times are disposed of.

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497. This is a change from section 576(1) of ICTA, which is not expressed to apply for the purpose of determining which of any qualifying shares are disposed of. See *Change 28* in Annex 1.
498. *Subsection (3)* introduces the rules for determining the answers to the questions in subsection (2).
499. Section 576(1) of ICTA, on which subsection (3)(a) is based, identifies the shares disposed of on a last in first out (LIFO) basis. Section 576(1) of ICTA and its predecessor, section 37 of FA 1980, were enacted at a time when shares were pooled and treated as a single asset for capital gains tax purposes. Accordingly, it was and remains necessary to have a rule identifying the order in which shares in the pool are disposed of, in order to ensure that share loss relief is obtained only on the disposal of qualifying shares.
500. FA 1998 made changes to the identification rules in TCGA, as a result of which shares acquired on or after 6 April 1998 are not pooled but, on a disposal, are in most cases identified on a LIFO basis.
501. Taking account of those changes, subsection (3)(a) applies the FA 1998 rules (see *subsection (4)*) or, in the case of shares acquired on different dates before 6 April 1998, a specific LIFO rule (see *subsection (5)*). See *Change 29* in Annex 1.
502. Subsection (3)(b) is based on section 576(1A) of ICTA and applies the rules in *subsection (6)*, based on section 576(1B) of that Act, if the mixed holding includes any of:
- shares issued before 1 January 1994 to which business expansion scheme relief is attributable;
  - shares to which EIS income tax relief is attributable; and
  - shares to which EIS deferral relief is attributable.
503. *Subsection (7)* is new and puts on a statutory basis the practice under which questions which cannot be determined by the specific provisions of this section are to be determined on a just and reasonable basis. This subsection will principally be required in cases where some but not all of the shares of the same class acquired, or treated as having been acquired, on the same day are shares that are not capable of being qualifying shares. See *Change 29* in Annex 1.

***Section 149: Section 148: supplementary***

504. This section supplements section 148. It is new.
505. *Subsection (1)* corrects the absence of an amendment to section 299 of ICTA as applied by section 576(1B) of that Act consequential upon the enactment of section 105A of TCGA by FA 2002. It applies if an individual has a mixed holding which includes shares to which business expansion scheme relief, EIS income tax relief or EIS deferral relief is attributable.
506. Subsection (1) ensures that, if the individual makes an election for the alternative identification rule under section 105A of TCGA to apply for the purposes of capital gains tax on the disposal of shares in the holding where “approved scheme shares” are acquired on the same day as other shares of the same class, the alternative rule will also apply for the purposes of share loss relief. See *Change 30* in Annex 1.
507. *Subsection (2)* determines the time of acquisition for the purposes of section 148 of shares issued in a reorganisation within the meaning of section 126 of TCGA to which section 127 of that Act applies. See *Change 31* in Annex 1.

508. *Subsection (3)* clarifies that shares held or disposed of by a nominee or bare trustee for an individual are part of the individual's holding for the purposes of section 148. See *Change 32* in Annex 1.

### ***Section 150: Deemed time of issue for certain shares***

509. This section contains provisions which determine the time of issue of shares for the purposes of the provisions listed in *subsection (1)*. It is based on section 574(3) of ICTA.
510. *Subsection (2)* mirrors section 135(3) and applies in cases where the shares have been transferred to an individual by that individual's spouse or civil partner. See *Change 33* in Annex 1.
511. *Subsection (3)* mirrors section 135(4) and applies to corresponding bonus shares. See *Change 34* in Annex 1.

### ***Section 151: Interpretation of Chapter***

512. This section explains the meaning of expressions used in this Chapter. It is based on section 576(5) of ICTA.
513. *Subsection (1)* includes the definition of "corresponding bonus shares". *Subsection (2)* amplifies that definition. See *Change 23* in Annex 1.
514. The introduction of sections 137 to 146 makes it necessary to ensure that the word "shares" has the same meaning in those sections as it does in the sections of Part 5 to which they correspond with modifications. Accordingly, *subsections (3) to (6)* provide that the application of the definition of "shares" in *subsection (1)* is subject to the exceptions mentioned in section 576(5) of ICTA, those required for the purposes of sections 137 to 146 of this Act and those required for the purposes of section 147 as a result of the changes described in *Change 26* in Annex 1.
515. *Subsection (8)* is new and clarifies that the date of disposal is the time when the disposal is made or treated as made for the purposes of the capital gains tax legislation. See *Change 35* in Annex 1.

## ***Chapter 7: Losses from miscellaneous transactions***

### **Overview**

516. This Chapter gives relief for losses from miscellaneous transactions.

### ***Section 152: Losses from miscellaneous transactions***

517. This section provides relief for losses from certain transactions (known as Case VI losses before the enactment of ITTOIA). It is based on section 392 of ICTA.
518. The provisions relating to Case VI income are in Chapter 8 of Part 5 of ITTOIA. That Act amended section 392 of ICTA (which operates by reference to section 836B of ICTA, also inserted by Schedule 1 to ITTOIA). Section 836B of ICTA is rewritten as section 1016 of this Act.
519. A person can make a claim to deduct a loss incurred in a relevant transaction in computing the person's net income of the tax year or of a subsequent tax year, but only from the person's miscellaneous income from relevant transactions. Transactions are relevant if any profits from them would be liable to income tax under a provision listed in section 1016.

### ***Section 153: How relief works***

520. This section explains how the deductions are made. It is based on section 392(2) and (5) of ICTA.



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which received Royal Assent on 20 March 2007*

***Section 154: Transactions in deposit rights***

521. This section explains the application of the loss relief against miscellaneous income rules as they apply to transactions in deposit rights. It is based on section 398 of ICTA.

***Section 155: Time limit for claiming relief***

522. This section sets out the time limits for making claims for loss relief against miscellaneous income. It is based on section 392(6) and (7) of ICTA.