



Finance (No. 2) Act 2023

2023 CHAPTER 30

PART 1

INCOME TAX, CORPORATION TAX AND CAPITAL GAINS TAX

Chargeable gains

42 Carried interest: election to pay tax as scheme profits arise

- (1) TCGA 1992 is amended as follows.
- (2) After section 103KF insert—

“103KFA Election for carried interest gains to be chargeable as scheme profits arise

- (1) An individual (“A”) may make an election under this section in respect of an investment scheme (“the relevant scheme”) if—
 - (a) section 103KA applies in relation to A and the relevant scheme, or
 - (b) it is reasonable to expect that it will apply in relation to A and the relevant scheme.
- (2) Subsection (3) applies for a tax year (“the relevant tax year”) where an election made under this section has effect for that tax year.
- (3) A chargeable gain is deemed to arise to A in the relevant tax year and is to be treated as accruing to A immediately before the end of the relevant tax year.
- (4) The amount of the gain is the amount given by reducing—
 - (a) the amount of carried interest that would arise to A in the relevant tax year in the circumstances mentioned in subsection (5), by
 - (b) the sum of chargeable gains deemed to arise to A under this section in respect of the relevant scheme in previous tax years.

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- (5) Those circumstances are that—
- (a) all of the investments held by the relevant scheme in the relevant tax year, and previously held by the scheme, whose disposal would be relevant to A's entitlement to carried interest, were disposed of in the relevant tax year,
 - (b) the amount realised on the disposal of each investment that was not actually disposed of in, or before, the relevant tax year were the amount of the costs to the relevant scheme in acquiring that investment,
 - (c) all income that was received by the scheme (whether before or during the relevant tax year) and that would be relevant to A's entitlement to carried interest, were received in the relevant tax year, and
 - (d) all profits realised by the scheme as a result of those disposals and the receipt of that income were distributed to its investors in the relevant tax year.
- (6) Where—
- (a) distributions were made by the scheme to external investors before the relevant tax year, and
 - (b) the timing of those distributions affects the amount of carried interest that actually arises to A,
- the amount of carried interest to be presumed to arise in the circumstances mentioned in [subsection \(5\)](#) is to reflect the fact those distributions were made before the relevant tax year.
- (7) But if reflecting that fact would lead to a presumption that an amount of carried interest had arisen before the relevant tax year, any such amount is to be presumed to arise in the relevant tax year.
- (8) A chargeable gain treated as accruing to an individual under [subsection \(3\)](#) is a chargeable gain accruing on the disposal of an asset situated outside the United Kingdom only to the extent that the individual performs investment management services in respect of the relevant scheme outside the United Kingdom.
- (9) An election under this section—
- (a) must be made by notice given to an officer of Revenue and Customs, and
 - (b) may not be revoked.
- (10) A notice making an election—
- (a) must state the first tax year for which it is to have effect, and
 - (b) may not be given after 31 January following the end of that tax year.

103KFB Election in relation to scheme to apply to associated schemes

- (1) Where an election has been made under [section 103KFA](#) in relation to an investment scheme (“S”) that is associated with another investment scheme, the election applies in respect of the other scheme (whether or not the conditions for an election to be made in respect of the other scheme were met at that time).

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- (2) “Associated”, in relation to two or more investments schemes, is to be construed in accordance with section 809FZZ of ITA 2007.

103KFC Interaction with other charges

- (1) The accrual of a chargeable gain treated as accruing to an individual under section 103KFA(3) does not prevent the individual or any other person being charged to tax (whether income tax, capital gains tax or any other tax, and including as a result of section 103KA) in relation to carried interest that arises to the individual under arrangements with the relevant scheme.
- (2) But subsection (3) applies where an individual—
- (a) has made an election under section 103KFA,
 - (b) has accrued a chargeable gain treated as accruing under section 103KFA(3),
 - (c) has paid (and has not been repaid) an amount of capital gains tax that is attributable to that chargeable gain, and
 - (d) is charged to tax (whether income tax, capital gains tax or another tax) in relation to carried interest that—
 - (i) arises to the individual under arrangements with the relevant scheme, and
 - (ii) arises in or after the tax year in which a gain first accrued under that section.
- (3) The individual may make a claim for one or more consequential adjustments to be made reducing the tax mentioned in subsection (2)(d).
- (4) On a claim under subsection (3) an officer of Revenue and Customs must make such of the consequential adjustments claimed (if any) as are just and reasonable.
- (5) The value of any consequential adjustments made must not exceed the lesser of—
- (a) the amount of capital gains tax paid as mentioned in subsection (2)(c), and
 - (b) the tax charged as mentioned in subsection (2)(d).
- (6) Consequential adjustments may be made—
- (a) in respect of any period, and
 - (b) by way of an assessment, the modification of an assessment, the amendment of a claim, or otherwise.
- (7) No claim may be made under section 103KE (carried interest: avoidance of double taxation) in respect of tax charged as a result of the accrual of a chargeable gain treated as accruing to an individual under section 103KFA(3).

103KFD Deemed accrual of loss where carried interest never arises

- (1) Subsection (3) applies where—
- (a) an individual has made an election under section 103KFA,
 - (b) the individual has accrued a chargeable gain treated as accruing under section 103KFA(3), and

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- (c) the conditions in subsection (2) are met.
- (2) Those conditions are that—
 - (a) all, or substantially all, of the investments of the relevant scheme have been disposed of,
 - (b) the amount of carried interest that has arisen to the individual in respect of the relevant scheme since the beginning of the first tax year in which a gain is treated as accruing under section 103KFA(3) is less than the sum of chargeable gains treated as accruing to the individual under that section, and
 - (c) no further amount of carried interest can reasonably be expected to arise to the individual under arrangements with the relevant scheme.
- (3) The individual is to be treated as accruing a loss immediately before the end of the tax year in which the conditions in subsection (2) are first met.
- (4) The amount of that loss is the amount given by subtracting—
 - (a) the amount of carried interest that arose to the individual in respect of the relevant scheme since the beginning of the first tax year in which a gain is treated as accruing under section 103KFA(3), from
 - (b) the sum of the chargeable gains that have accrued under section 103KFA(3) (including any gain that accrues in respect of the tax year in which the loss accrues).
- (5) Where a loss has accrued to an individual as a result of subsection (3)—
 - (a) section 103KFA(3) does not apply (in relation to the individual and the relevant scheme) for any tax year after the tax year in which the loss accrued, and
 - (b) if carried interest arises to the individual in respect of the relevant scheme after the loss accrued, the individual may not make a claim under section 103KFC(3) in respect of tax charged in relation to it.

103KFE Anti-avoidance

- (1) This section applies where an election was made by an individual under section 103KFA and the main purpose, or one of the main purposes, of making the election is to cause a loss to be treated as accruing to the individual under subsection (3) of section 103KFD.
- (2) Any such loss that would (in the absence of this section) accrue to the individual under that subsection is to be counteracted by the making of such adjustments as are just and reasonable.
- (3) Any adjustments required to be made under this section (whether or not by an officer of Revenue and Customs) may be made by way of—
 - (a) an assessment,
 - (b) the modification of an assessment, or
 - (c) amendment or disallowance of a claim, or otherwise.”
- (3) In section 1H (the main rates of CGT), in subsection (9)—
 - (a) omit the “or” at the end of paragraph (a), and
 - (b) after that paragraph insert—

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“(aa) under section [103KFA\(3\)](#) (gains on deemed carried interest where election made), or”.

(4) The amendments made by this section have effect for the tax year 2022-23 and subsequent tax years.

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Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 131(2)(3) substituted for s. 131(2) by 2024 c. 3 Sch. 12 para. 5(3)
- s. 147A inserted by 2024 c. 3 Sch. 12 para. 8(1)
- s. 148A-148C inserted by 2024 c. 3 Sch. 12 para. 8(3)
- s. 150(6A) inserted by 2024 c. 3 Sch. 12 para. 50(5)(b)
- s. 151(1)(c) and word inserted by 2024 c. 3 Sch. 12 para. 9(2)(d)
- s. 151(1)(aa) inserted by 2024 c. 3 Sch. 12 para. 9(2)(c)
- s. 151(6A) inserted by 2024 c. 3 Sch. 12 para. 9(4)
- s. 151(8) inserted by 2024 c. 3 Sch. 12 para. 9(6)
- s. 159(1)(a)(b) substituted for words by 2024 c. 3 Sch. 12 para. 12(2)
- s. 159(2)(a)(b) substituted for words by 2024 c. 3 Sch. 12 para. 12(3)
- s. 159(3)(a)(b) substituted for words by 2024 c. 3 Sch. 12 para. 12(4)
- s. 159(4) inserted by 2024 c. 3 Sch. 12 para. 12(5)
- s. 165(2)(a)(i)(ii) s. 165(2)(a)(b) become s. 165(2)(a)(i)(ii) by 2024 c. 3 Sch. 12 para. 50(6)(b)
- s. 168(12) inserted by 2024 c. 3 Sch. 12 para. 14(8)
- s. 170(2A) inserted by 2024 c. 3 Sch. 12 para. 14(9)(b)
- s. 176A-176C and cross-heading inserted by 2024 c. 3 Sch. 12 para. 8(6)
- s. 176D-176F and cross-heading inserted by 2024 c. 3 Sch. 12 para. 16(1)
- s. 178(1A)(1B) inserted by 2024 c. 3 Sch. 12 para. 17(4)
- s. 178(5)(6) inserted by 2024 c. 3 Sch. 12 para. 17(6)
- s. 179(1A) inserted by 2024 c. 3 Sch. 12 para. 17(7)(a)
- s. 179(3A)(3B) inserted by 2024 c. 3 Sch. 12 para. 17(7)(b)
- s. 180(8)(b)(ii)(iia) substituted for s. 180(8)(b)(ii) by 2024 c. 3 Sch. 12 para. 19(4)
- s. 183A inserted by 2024 c. 3 Sch. 12 para. 20(5)
- s. 195(7A) inserted by 2024 c. 3 Sch. 12 para. 25(1)
- s. 196(1)(e) and words inserted by 2024 c. 3 Sch. 12 para. 22(1)(b)
- s. 196(1A) inserted by 2024 c. 3 Sch. 12 para. 21(1)(b)
- s. 197(4)(d)(e) inserted by 2024 c. 3 Sch. 12 para. 23(b)
- s. 197(5)(c) and word inserted by 2024 c. 3 Sch. 12 para. 22(2)(e)
- s. 197(6A) inserted by 2024 c. 3 Sch. 12 para. 21(2)
- s. 197(7A) inserted by 2024 c. 3 Sch. 12 para. 24
- s. 197A inserted by 2024 c. 3 Sch. 12 para. 25(2)
- s. 198A inserted by 2024 c. 3 Sch. 12 para. 26
- s. 211(1)-(1C) substituted for s. 211(1) by 2024 c. 3 Sch. 12 para. 27(a)
- s. 213(6A) inserted by 2024 c. 3 Sch. 12 para. 28
- s. 232(3A) inserted by 2024 c. 3 Sch. 12 para. 4(6)
- s. 232A inserted by 2024 c. 3 Sch. 12 para. 2(2)
- s. 236(2A) inserted by 2024 c. 3 Sch. 12 para. 31(3)
- s. 251A inserted by 2024 c. 3 Sch. 12 para. 29(1)
- s. 253(2)(b)(va) inserted by 2024 c. 3 Sch. 12 para. 56(10)(c)(iii)
- s. 255(2A) inserted by 2024 c. 3 Sch. 12 para. 34(1)(a)
- s. 255(4)-(6) inserted by 2024 c. 3 Sch. 12 para. 34(1)(c)
- s. 256A inserted by 2024 c. 3 Sch. 12 para. 35(1)
- s. 262(1A)-(1D) inserted by 2024 c. 3 Sch. 12 para. 36
- s. 267(3A) inserted by 2024 c. 3 Sch. 12 para. 42(1)(a)
- s. 267(3B)-(3D) inserted by 2024 c. 3 Sch. 12 para. 43(1)(b)
- s. 267A inserted by 2024 c. 3 Sch. 12 para. 42(2)
- s. 268A inserted by 2024 c. 3 Sch. 12 para. 2(4)

- s. 272(8)(da) inserted by 2024 c. 3 Sch. 12 para. 44(1)
- s. 272(9)-(11) inserted by 2024 c. 3 Sch. 12 para. 43(3)(b)
- s. 272A inserted by 2024 c. 3 Sch. 12 para. 42(3)
- s. 273(3)(ba) inserted by 2024 c. 3 Sch. 12 para. 44(2)
- s. 273(4)(pa) inserted by 2024 c. 3 Sch. 12 para. 57(3)(c)
- s. 273A273B inserted by 2024 c. 3 Sch. 12 para. 45(1)
- s. 273C inserted by 2024 c. 3 Sch. 12 para. 46
- s. 276(c)(iiia) inserted by 2024 c. 3 Sch. 12 para. 45(2)(b)
- s. 276(aa) inserted by 2024 c. 3 Sch. 12 para. 45(2)(a)
- s. 311A inserted by 2024 c. 3 s. 21(3)
- Sch. 14 para. 37A37B and cross-heading inserted by 2024 c. 3 Sch. 12 para. 2(6)(b)
- Sch. 14 para. 39(1)(aa) inserted by 2024 c. 3 Sch. 12 para. 2(6)(c)(ii)
- Sch. 14 para. 39(2)(aa) inserted by 2024 c. 3 Sch. 12 para. 2(6)(c)(iii)
- Sch. 14 para. 33A inserted by 2024 c. 3 Sch. 12 para. 37(3)
- Sch. 14 para. 6(1A) inserted by 2024 c. 3 Sch. 12 para. 58(1)(a)
- Sch. 14 para. 34(2A) inserted by 2024 c. 3 Sch. 12 para. 58(1)(b)(ii)
- Sch. 14 para. 3(3)-(5) substituted for Sch. 14 para. 3(3) by 2024 c. 3 Sch. 12 para. 2(6)(a)(iii)
- Sch. 15 para. 2(1)(za) inserted by 2024 c. 3 Sch. 12 para. 16(2)
- Sch. 15 para. 2(1)(k) inserted by 2024 c. 3 Sch. 12 para. 40(2)
- Sch. 15 para. 2(1)(l) inserted by 2024 c. 3 Sch. 12 para. 41(4)
- Sch. 15 para. 1(1)(aa) inserted by 2024 c. 3 Sch. 12 para. 58(2)(a)
- Sch. 15 para. 2(1)(ea) inserted by 2024 c. 3 Sch. 12 para. 58(2)(b)(i)
- Sch. 15 para. 2(1)(fa) inserted by 2024 c. 3 Sch. 12 para. 58(2)(b)(ii)
- Sch. 16 para. 10(1) Sch. 16 para. 10 renumbered as Sch. 16 para. 10(1) by 2024 c. 3 Sch. 12 para. 58(3)(a)
- Sch. 16 para. 2(11)(b) inserted by 2024 c. 3 Sch. 12 para. 34(2)(d)(ii)
- Sch. 16 para. 2(3A) inserted by 2024 c. 3 Sch. 12 para. 38(3)
- Sch. 16 para. 2(12)(13) inserted by 2024 c. 3 Sch. 12 para. 38(8)
- Sch. 16 para. 4(3)(d) and word inserted by 2024 c. 3 Sch. 12 para. 39(3)(a)(ii)
- Sch. 16 Pt. 3 inserted by 2024 c. 3 Sch. 12 para. 40(1)
- Sch. 16 para. 10(2)(3) inserted by 2024 c. 3 Sch. 12 para. 58(3)(d)
- Sch. 16 para. 2(1)(b)(ba) substituted for Sch. 16 para. 2(1)(b) by 2024 c. 3 Sch. 12 para. 34(2)(a)
- Sch. 16 para. 3(1)(1A) substituted for Sch. 16 para. 3(1) by 2024 c. 3 Sch. 12 para. 39(2)
- Sch. 16 para. 3(7)-(9) substituted for Sch. 16 para. 3(7)(8) by 2024 c. 3 Sch. 12 para. 29(2)
- Sch. 16 para. 10(1)(a) word substituted by 2024 c. 3 Sch. 12 para. 58(3)(c)
- Sch. 16 para. 10(1) words inserted by 2024 c. 3 Sch. 12 para. 58(3)(b)(ii)
- Sch. 16 para. 10(1) words substituted by 2024 c. 3 Sch. 12 para. 58(3)(b)(i)
- Sch. 16A inserted by 2024 c. 3 Sch. 12 para. 41(1)