



# Income and Corporation Taxes Act 1988

## 1988 CHAPTER 1

### PART IV

#### PROVISIONS RELATING TO THE SCHEDULE D CHARGE

### CHAPTER VII

#### PARTNERSHIPS AND SUCCESSIONS

##### *General*

#### **111 Partnership assessments to income tax**

Where a trade or profession is carried on by two or more persons jointly, income tax in respect thereof shall be computed and stated jointly, and in one sum, and shall be separate and distinct from any other tax chargeable on those persons or any of them, and a joint assessment shall be made in the partnership name.

#### **112 Partnerships controlled abroad**

- (1) Where a trade or business is carried on by two or more persons in partnership, and the control and management of the trade or business is situated abroad, the trade or business shall be deemed to be carried on by persons resident outside the United Kingdom, and the partnership shall be deemed to reside outside the United Kingdom, notwithstanding the fact that some of the members of the partnership are resident in the United Kingdom and that some of its trading operations are conducted within the United Kingdom.
- (2) Where any part of the trade or business of a partnership firm whose management and control is situated abroad consists of trading operations within the United Kingdom, the firm shall, subject to subsection (3) below, be chargeable in respect of the profits of those trading operations within the United Kingdom to the same extent as, and no further than, a person resident abroad is chargeable in respect of trading operations by

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him within the United Kingdom, notwithstanding the fact that one or more members of the firm are resident in the United Kingdom.

- (3) For the purpose of charging any such firm as is mentioned in subsection (2) above in respect of the profits of its trading operations within the United Kingdom, an assessment may be made on the firm in respect of those profits in the name of any partner resident in the United Kingdom.
- (4) In any case where—
  - (a) a person resident in the United Kingdom (in this subsection and subsection (5) below referred to as “the resident partner”) is a member of a partnership which resides or is deemed to reside outside the United Kingdom; and
  - (b) by virtue of any arrangements falling within section 788 any of the income or capital gains of the partnership is relieved from tax in the United Kingdom, the arrangements referred to in paragraph (b) above shall not affect any liability to tax in respect of the resident partner’s share of any income or capital gains of the partnership.
- (5) If, in a case where subsection (4) above applies, the resident partner’s share of the income of the partnership consists of or includes a share in a qualifying distribution made by a company resident in the United Kingdom, then, notwithstanding anything in the arrangements, the resident partner (and not the partnership as a whole) shall be regarded as entitled to that share of the tax credit in respect of the distribution which corresponds to his share of the distribution.
- (6) Section 115(5) has effect as respects the application of this section where the partners in a partnership include a company.

### **113 Effect, for income tax, of change in ownership of trade, profession or vocation**

- (1) Where there is a change in the persons engaged in carrying on any trade, profession or vocation chargeable under Case I or II of Schedule D, then, subject to the provisions of this section and of section 114(3)(b), the amount of the profits or gains of the trade, profession or vocation on which income tax is chargeable for any year of assessment and the persons on whom it is chargeable, shall be determined as if the trade, profession or vocation had been permanently discontinued, and a new one set up and commenced, at the date of the change.
- (2) Subject to section 114(3)(b), where there is such a change as is mentioned in subsection (1) above, and a person engaged in carrying on the trade, profession or vocation immediately before the change continues to be so engaged immediately after it, the persons so engaged immediately before and the persons so engaged immediately after the change may, by notice signed by them and sent to the inspector at any time within two years after the date of the change, elect that subsection (1) above shall not apply to treat the trade, profession or vocation as discontinued or a new one as set up and commenced.
- (3) Where there is in any year of assessment a change in the persons engaged in carrying on a trade, profession or vocation, and subsection (1) above does not apply by reason of a notice under subsection (2) above, then—
  - (a) income tax in respect of the trade, profession or vocation for that year shall be assessed and charged separately on those so engaged before the change and on those so engaged after the change, but the amount on which tax is chargeable

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- shall be computed as if there had been no such change in that year, and shall be apportioned as may be just; and
- (b) if, after the change but before the end of the second year of assessment following that in which the change occurred, there is a permanent discontinuance of the trade, profession or vocation (including a change treated as such), then, on that discontinuance, section 63 shall apply, as respects any period before the first-mentioned change, to the persons charged or chargeable for that period as it would apply if no such change had taken place and they had been charged to tax accordingly for the subsequent period up to the discontinuance.
- (4) There shall be made any such assessment, reduction of an assessment or, on the making of a claim therefor, repayment of income tax as may in any case be necessary for giving effect to this section.
- (5) Any question which arises as to the manner in which any sum is to be apportioned under subsection (3)(a) above shall be determined, for the purposes of the tax of all of the persons as respects whose liability to tax the apportionment is material—
- (a) in a case where the same body of General Commissioners have jurisdiction with respect to all those persons, by those Commissioners, unless all those persons agree that it shall be determined by the Special Commissioners;
- (b) in a case where different bodies of Commissioners have jurisdiction with respect to those persons, by such of those bodies as the Board may direct, unless all those persons agree that it shall be determined by the Special Commissioners; and
- (c) in any other case, by the Special Commissioners;
- and any such Commissioners shall determine the question in like manner as an appeal, except that all those persons shall be entitled to appear and be heard by the Commissioners who are to make the determination, or to make representations to them in writing.
- (6) In the case of the death of a person who, if he had not died, would under the provisions of this section have become chargeable to tax for any year, the tax which would have been so chargeable shall be assessed and charged upon his executors or administrators, and shall be a debt due from and payable out of his estate; and where under those provisions an election may be made by any person, it may in the case of his death be made by his executors or administrators instead of by him.
- (7) For the purposes of this section, a change in the personal representatives of any person, or in the trustees of any trust, shall not be treated as a change in the persons engaged in carrying on any trade, profession or vocation carried on by those personal representatives or trustees as such.

#### *Partnerships involving companies*

### **114 Special rules for computing profits and losses**

- (1) So long as a trade is carried on by persons in partnership, and any of those persons is a company, the profits and losses (including terminal losses) of the trade shall be computed for the purposes of corporation tax in like manner, and by reference to the like accounting periods, as if the partnership were a company, and without regard to any change in the persons carrying on the trade, except that—

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- (a) references to distributions shall not apply; and
  - (b) subject to section 116(5), no deduction or addition shall be made for charges on income, or for capital allowances and charges, nor in any accounting period for losses incurred in any other period nor for any expenditure to which section 401(1) applies; and
  - (c) a change in the persons engaged in carrying on the trade shall be treated as the transfer of the trade to a different company if there continues to be a company so engaged after the change, but not a company that was so engaged before the change.
- (2) A company's share in the profits or loss of any accounting period of the partnership, or in any matter excluded from the computation by subsection (1)(b) above, shall be determined according to the interests of the partners during that period, and corporation tax shall be chargeable as if that share derived from a trade carried on by the company alone in its corresponding accounting period or periods; and the company shall be assessed and charged to tax for its corresponding accounting period or periods accordingly.
- In this subsection "corresponding accounting period or periods" means the accounting period or periods of the company comprising or together comprising the accounting period of the partnership, and any necessary apportionment shall be made between corresponding accounting periods if more than one.
- (3) Where any of the persons engaged in carrying on the trade is an individual, income tax shall be chargeable in respect of his share of the profits, and he shall be entitled to relief for his share of any loss, as if all the partners had been individuals except that—
- (a) income tax shall be chargeable, and any relief from income tax shall be given, by reference to the computations made for corporation tax, but so that the amounts so computed for an accounting period of the capital allowances and charges falling to be made in taxing the trade shall (as regards the individual's share of them) be given or made for the year or years of assessment comprising that period and, where necessary, apportioned accordingly; and
  - (b) section 113 shall not apply by reason of any change in the persons engaged in carrying on the trade unless an individual begins or ceases to be so engaged, and, where it does apply, an election under subsection (2) of that section shall be made only by the individuals so engaged, and only if an individual so engaged before the change continues to be so engaged after it; and
  - (c) sections 388 and 389 shall not apply except where section 394 applies to the partnership as a whole.
- (4) Section 111 shall apply to income tax chargeable in accordance with this section, matters relevant only to corporation tax being omitted from the assessment.

## **115 Provisions supplementary to section 114**

- (1) Subsections (2) and (3) below have effect as respects income tax chargeable in accordance with section 114 for any year of assessment throughout all or any part of which one or more of the persons engaged in carrying on the trade is an individual.
- (2) Notwithstanding any difference between the partners' interests during the basis period and their interests during the year of assessment, the amount of the individual's income from the partnership for the year of assessment, or the total of the amounts of the individuals' incomes from the partnership for that year, shall be deemed to be not less

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than the profits of the basis period, reduced, where any share was apportioned to a company under section 114(2), by the amount of that company's share.

- (3) Where there are two or more individuals and, but for subsection (2) above, the total of the amounts of the individuals' incomes from the partnership for the year would fall short of the profits of the basis period reduced, where any share was apportioned to a company under section 114(2), by the amount of that company's share, that amount shall be apportioned—
  - (a) according to the individuals' interests during the year of assessment, disregarding any company's interest; and
  - (b) in so far as that does not determine, or fully determine, the apportionment, between the individuals in equal shares.
- (4) Where a trade or business is carried on by two or more persons in partnership, and the control and management of the trade or business is situated abroad but those persons include a company resident in the United Kingdom, then as regards that company, this section and section 114 shall have effect as if the partnership were resident in the United Kingdom, and an assessment may be made on the company accordingly.
- (5) Subject to subsection (4) above, where the partners in a partnership include a company, section 112 shall apply whether for corporation tax or for income tax; and this section and section 114 shall have effect accordingly.
- (6) In this section and section 114—

“basis period”, in relation to a year of assessment, means any accounting period or part of an accounting period which is, or forms part of, the period on the profits or gains of which income tax for the year of assessment in question falls to be computed under Schedule D in respect of the trade;

“capital allowances and charges” means any allowances or charges under any of the Capital Allowances Acts, not being allowances or charges which, for income tax, are given or made by deduction or addition in the computation of profits or gains;

and references in subsection (1) above to an individual's income from the partnership are references to that income before deduction of capital allowances or charges on income.
- (7) For the purposes of this section and section 114 “profits” shall not be taken as including chargeable gains.

## **116 Arrangements for transferring relief**

- (1) The provisions of subsection (2) below shall apply in relation to a company (“the partner company”) which is a member of a partnership carrying on a trade if arrangements are in existence (whether as part of the terms of the partnership or otherwise) whereby—
  - (a) in respect of the whole or any part of the value of, or of any portion of, the partner company's share in the profits or loss of any accounting period of the partnership, another member of the partnership or any person connected with another member of the partnership receives any payment or acquires or enjoys, directly or indirectly, any other benefit in money's worth; or
  - (b) in respect of the whole or any part of the cost of, or of any portion of, the partner company's share in the loss of any accounting period of the partnership, the partner company or any person connected with that company

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receives any payment or acquires or enjoys, directly or indirectly, any other benefit in money's worth, other than a payment in respect of group relief to the partner company by a company which is a member of the same group as the partner company for the purposes of group relief.

- (2) In any case where the provisions of this subsection apply in relation to the partner company—
- (a) the company's share in the loss of the relevant accounting period of the partnership and its share in any charges on income, within the meaning of section 338, paid by the partnership in that accounting period shall not be available for set-off for the purposes of corporation tax except against its share in the profits of the trade carried on by the partnership; and
  - (b) except in accordance with paragraph (a) above, no trading losses shall be available for set-off for the purposes of corporation tax against the company's share in the profits of the relevant accounting period of the partnership; and
  - (c) except in accordance with paragraphs (a) and (b) above, no amount which, apart from this subsection, would be available for relief against profits shall be available for set-off for the purposes of corporation tax against so much of the company's total profits as consists of its share in the profits of the relevant accounting period of the partnership; and
  - (d) notwithstanding anything in section 239, no advance corporation tax may be set against the company's liability to corporation tax on its share in the profits of the relevant accounting period of the partnership.
- (3) In subsection (2) above "relevant accounting period of the partnership" means any accounting period of the partnership in which any such arrangements as are specified in subsection (1) above are in existence or to which any such arrangements apply.
- (4) If a company is a member of a partnership and tax in respect of any profits of the partnership is chargeable under Case VI of Schedule D, this section shall apply in relation to the company's share in the profits or loss of the partnership as if—
- (a) the profits or loss to which the company's share is attributable were the profits of, or the loss incurred in, a trade carried on by the partnership; and
  - (b) any allowance which falls to be made under section 46(1) of the Finance Act 1971 (machinery and plant on lease) were an allowance made in taxing that trade.
- (5) For the purposes of this section, subsection (2) of section 114 shall have effect for determining a company's share in the profits or loss of any accounting period of a partnership as if, in subsection (1)(b) of that section, the words "or for capital allowances and charges" were omitted.
- (6) In this section "arrangements" means arrangements of any kind whether in writing or not.
- (7) Section 839 shall apply for the purposes of this section.

#### *Limited partners*

### **117 Restriction on relief: individuals**

- (1) An amount which may be given or allowed to an individual under section 353, 380 or 381 below or section 71 of the 1968 Act—

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- (a) in respect of a loss sustained by him in a trade, or of interest paid by him in connection with the carrying on of a trade, in a relevant year of assessment; or
- (b) as an allowance falling to be made to him for a relevant year of assessment either in taxing a trade or by way of discharge or repayment of tax to which he is entitled by reason of his participation in a trade,

may be given or allowed otherwise than against income consisting of profits or gains arising from the trade only to the extent that the amount given or allowed or (as the case may be) the aggregate amount does not exceed the relevant sum.

(2) In this section—

“limited partner” means—

- (i) a person who is carrying on a trade as a limited partner in a limited partnership registered under the Limited Partnerships Act 1907;
- (ii) a person who is carrying on a trade as a general partner in a partnership, who is not entitled to take part in the management of the trade and who is entitled to have his liabilities, or his liabilities beyond a certain limit, for debts or obligations incurred for the purposes of the trade discharged or reimbursed by some other person; or
- (iii) a person who carries on a trade jointly with others and who, under the law of any territory outside the United Kingdom, is not entitled to take part in the management of the trade and is not liable beyond a certain limit for debts or obligations incurred for the purposes of the trade;

“relevant year of assessment” means a year of assessment at any time during which the individual carried on the trade as a limited partner;

“the aggregate amount” means the aggregate of any amounts given or allowed to him at any time under section 353, 380 or 381 below or section 71 of the 1968 Act—

- (a) in respect of a loss sustained by him in the trade, or of interest paid by him in connection with carrying it on, in a relevant year of assessment; or
- (b) as an allowance falling to be made to him for a relevant year of assessment either in taxing the trade or by way of discharge or repayment of tax to which he is entitled by reason of his participation in the trade;

“the relevant sum” means the amount of his contribution to the trade as at the appropriate time; and

“the appropriate time” is the end of the relevant year of assessment in which the loss is sustained or the interest paid or for which the allowance falls to be made (except that where he ceased to carry on the trade during that year of assessment it is the time when he so ceased).

(3) A person’s contribution to a trade at any time is the aggregate of—

- (a) the amount which he has contributed to it as capital and has not, directly or indirectly, drawn out or received back (other than anything which he is or may be entitled so to draw out or receive back at any time when he carries on the trade as a limited partner or which he is or may be entitled to require another person to reimburse to him), and
- (b) the amount of any profits or gains of the trade to which he is entitled but which he has not received in money or money’s worth.

(4) To the extent that an allowance is taken into account in computing profits or gains or losses in the year of the loss by virtue of section 383(1) it shall, for the purposes of

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this section, be treated as falling to be made in the year of the loss (and not the year of assessment for which the year of loss is the basis year).

### **118 Restriction on relief: companies**

(1) An amount which may be given or allowed under section 338, 393(2) or 403(1) to (3) and (7) below or section 74 of the 1968 Act—

- (a) in respect of a loss incurred by a company in a trade, or of charges paid by a company in connection with the carrying on of a trade, in a relevant accounting period; or
- (b) as an allowance falling to be made to a company for a relevant accounting period either in taxing a trade or by way of discharge or repayment of tax to which it is entitled by reason of its participation in a trade,

may be given or allowed to that company (“the partner company”) otherwise than against profits or gains arising from the trade, or to another company, only to the extent that the amount given or allowed or (as the case may be) the aggregate amount does not exceed the relevant sum.

(2) In this section—

“relevant accounting period” means an accounting period of the partner company at any time during which it carried on the trade as a limited partner (within the meaning of section 117(2));

“the aggregate amount” means the aggregate of any amounts given or allowed to the partner company or another company at any time under section 338, 393(2) or 403(1) to (3) and (7) below or section 74 of the 1968 Act—

- (a) in respect of a loss incurred by the partner company in the trade, or of charges paid by it in connection with carrying it on, in any relevant accounting period; or
- (b) as an allowance falling to be made to the partner company for any relevant accounting period either in taxing the trade or by way of discharge or repayment of tax to which it is entitled by reason of its participation in the trade;

“the relevant sum” means the amount of the partner company’s contribution (within the meaning of section 117(3)) to the trade as at the appropriate time; and

“the appropriate time” is the end of the relevant accounting period in which the loss is incurred or the charges paid or for which the allowance falls to be made (except that where the partner company ceased to carry on the trade during that accounting period it is the time when it so ceased).