



Finance Act 2006

2006 CHAPTER 25

PART 3

INCOME TAX, CORPORATION TAX AND CAPITAL GAINS TAX

CHAPTER 8

AVOIDANCE: MISCELLANEOUS

VALID FROM 19/07/2006

Film partnerships

75 Interest relief: film partnership

- (1) The amount of interest on a loan in respect of which an individual (“the borrower”) is eligible for relief for a year of assessment under sections 353 and 362 of ICTA (interest on loan to buy into partnership) shall, where this section applies, be restricted to 40% of the interest that would otherwise be eligible for relief.
- (2) This section applies where—
 - (a) the partnership (“the film partnership”) carries on a trade,
 - (b) the profits or losses of the trade are computed in accordance with Chapter 9 of Part 2 of ITTOIA 2005 (films, etc),
 - (c) the loan is secured on an asset or activity of another partnership (“the investment partnership”),
 - (d) the borrower is or has been a member of the investment partnership, and
 - (e) at a time in the year of assessment the proportion of the profits of the investment partnership to which the borrower is entitled is less than the proportion of the partnership's capital contributed by him at that time.

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- (3) For the purposes of subsection (2)(c) a loan is secured on an asset or activity of a partnership if there is any arrangement—
 - (a) under which an asset of the partnership may be used or relied upon wholly or partly to guarantee repayment of any part of the loan, or
 - (b) by virtue of which any part of the loan is expected to be repaid (directly or indirectly) out of assets or income held by or accruing to the partnership.
- (4) For the purposes of subsection (2)(e) the reference to profits excludes any amount that would not be taken into account as, or for the purpose of calculating, income for the purposes of the Tax Acts.
- (5) In subsection (2)(e) the reference to the partnership's capital is a reference to—
 - (a) anything that is, or in accordance with generally accepted accounting practice would be, accounted for as partners' capital or partners' equity, and
 - (b) amounts lent to the partnership by the partners.
- (6) For the purposes of subsection (2)(e) the reference to the proportion of the partnership's capital contributed by the borrower includes, in particular, a reference to—
 - (a) any amount paid by the borrower to acquire an interest in the investment partnership if or in so far as the borrower retains the interest at that time,
 - (b) any amount made available by the borrower (directly or indirectly) to another person who acquires an interest in the investment partnership if or in so far as that other person retains the interest at that time,
 - (c) any amount lent by the borrower to the investment partnership,
 - (d) any amount made available by the borrower (directly or indirectly) to another person who lends it to the investment partnership, and
 - (e) an amount made available in any other way prescribed by regulations made by the Commissioners for Her Majesty's Revenue and Customs.
- (7) Regulations under subsection (6)(e)—
 - (a) may make provision having retrospective effect,
 - (b) may make provision generally or only in relation to specified cases or circumstances,
 - (c) may make different provision for different cases or circumstances,
 - (d) may make transitional, consequential or incidental provision,
 - (e) shall be made by statutory instrument, and
 - (f) shall not be made unless a draft has been laid before and approved by resolution of the House of Commons.
- (8) In subsections (2) to (6) a reference to the borrower or another partner includes a reference to a person connected with him within the meaning of section 839(2) of ICTA.
- (9) This section shall have effect in relation to the payment of interest accruing on or after 10th March 2006.

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Financial instruments

76 Avoidance involving financial arrangements

Schedule 6 (which makes provision in relation to tax avoidance involving financial arrangements) has effect.

VALID FROM 19/07/2006

Intangible fixed assets

77 Treating assets as “existing assets” etc

- (1) Schedule 29 to FA 2002 (gains and losses of a company from intangible fixed assets) is amended as follows.
- (2) In paragraph 13 (credits in respect of intangible fixed assets: introduction), in sub-paragraph (1) (credits brought into account under Part 3), after paragraph (a) (receipts recognised in determining profit or loss), insert—
 - “(aa) receipts in respect of royalties so far as the receipts do not give rise to a credit under paragraph 14 (see paragraph 14A),”.
- (3) After paragraph 14 (receipts recognised as they accrue) insert—

14A “Receipts in respect of royalties so far as not dealt with under paragraph 14

- (1) So far as a receipt in respect of any royalty does not give rise to a credit under paragraph 14 (whether in the period of account in which it is received or in a subsequent period of account), a credit shall be brought into account for tax purposes.
- (2) The amount of the credit to be brought into account for tax purposes is equal to so much of the amount of the receipt as does not give rise to a credit under paragraph 14.
- (3) The credit shall be brought into account for tax purposes in the accounting period in which the receipt is recognised for accounting purposes.”.
- (4) In paragraph 82 (assets excluded to extent specified: research and development), in sub-paragraph (2) (provisions of Schedule not applying to asset so far as representing expenditure on research and development)—
 - (a) in paragraph (a) (Part 2 not to apply subject to exception relating to paragraph 14), at the end insert “ or 14A (receipts in respect of royalties so far as not dealt with under paragraph 14) ”, and
 - (b) in paragraph (b) (Part 3 not to apply subject to exception for paragraph 14), for “paragraph 14” substitute “ paragraphs 14 and 14A ”.

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- (5) In paragraph 83 (assets excluded to extent specified: election to exclude capital expenditure on computer software), in sub-paragraph (3) (effect of election)—
- (a) in paragraph (a) (Part 2 not to apply subject to exception relating to paragraph 14), at the end insert “ or 14A (receipts in respect of royalties so far as not dealt with under paragraph 14) ”, and
 - (b) in paragraph (b) (Part 3 not to apply subject to exception for paragraph 14), for “paragraph 14” substitute “ paragraphs 14 and 14A ”.
- (6) In paragraph 118 (application of Schedule to assets created or acquired after commencement, that is to say, on or after 1st April 2002)—
- (a) in sub-paragraph (4) (application of sub-paragraph (1) subject to other paragraphs), at the end insert “and
 - (c) paragraph 127A (assets whose value derives from existing assets treated as existing assets), and
 - (d) paragraph 127B (assets acquired in connection with disposals of existing assets treated as existing assets).”, and
 - (b) in sub-paragraph (6) (nothing in paragraph 118 restricts application of Schedule in accordance with paragraph 119), at the end insert “, but see sub-paragraph (5) of that paragraph. ”.
- (7) In paragraph 119 (application of Schedule to royalties), at the end insert—
- “(5) Nothing in this paragraph shall be read as authorising or requiring an amount to be brought into account in connection with the realisation of an existing asset within the meaning of Part 4.”.
- (8) After paragraph 127 (certain assets acquired on transfer of business treated as existing assets) insert—

127A “Assets whose value derives from existing assets treated as existing assets

- (1) This paragraph applies where—
 - (a) a company acquires an intangible fixed asset (“the acquired asset”) after commencement from a person (“the transferor”) who at the time of the acquisition is a related party in relation to the company,
 - (b) the acquired asset is created, whether by the transferor or any other person, after commencement,
 - (c) the value of the acquired asset derives in whole or in part from any other asset (“the other asset”),
 - (d) the other asset has not at any time on or after 5th December 2005 been a chargeable intangible asset in the hands of the company or a related party in relation to the company or the transferor, and
 - (e) the existing asset condition is met.
- (2) The existing asset condition is that, after commencement,—
 - (a) the other asset has been an existing asset in the hands of the transferor at a time when the transferor was a related party in relation to the company, or

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- (b) the other asset has been an existing asset in the hands of any other person at a time when the other person was a related party in relation to the company or the transferor.
- (3) Where this paragraph applies the acquired asset shall be treated for the purposes of this Schedule as an existing asset in the hands of the company, but only so far as its value derives from the other asset.
- (4) If only part of the value of the acquired asset so derives—
 - (a) this Schedule has effect as if there were a separate asset representing the part of the value not so derived, and
 - (b) the enactments that apply where this Schedule does not apply have effect as if there were a separate asset representing the part of the value so derived.

Any apportionment necessary for this purpose shall be made on a just and reasonable basis.

- (5) For the purposes of this paragraph the cases in which the value of an asset may be derived from any other asset include any case where—
 - (a) assets have been merged or divided,
 - (b) assets have changed their nature, or
 - (c) rights or interests in or over assets have been created or extinguished.
- (6) For the purposes of this paragraph the time at which an asset is created or acquired is the time at which it would be regarded as created or acquired for the purposes of paragraph 118 (application of Schedule to assets created or acquired after commencement).

127B Assets acquired in connection with disposals of existing assets treated as existing assets

- (1) This paragraph applies where—
 - (a) a person disposes of an asset which, at the time of the disposal, is an existing asset in the hands of the person,
 - (b) a company which at the time of the disposal is a related party in relation to the person acquires an intangible fixed asset directly or indirectly in consequence of, or otherwise in connection with, the disposal, and
 - (c) the intangible fixed asset that is acquired would, apart from this paragraph, at the time of the acquisition be a chargeable intangible asset in the hands of the company.
- (2) Where this paragraph applies the intangible fixed asset that is acquired shall be treated for the purposes of this Schedule as an existing asset in the hands of the company.
- (3) For the purposes of this paragraph—
 - (a) “asset”, in relation to any disposal, means any asset for the purposes of the Taxation of Chargeable Gains Act 1992,
 - (b) a person “disposes of” an asset if, for the purposes of that Act, the person makes a part disposal of the asset or any other disposal of the asset,

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- (c) the time at which a disposal of an asset is made is the time at which it is made for the purposes of that Act.
- (4) For the purposes of this paragraph it does not matter—
- (a) whether the asset that the person disposes of is the same asset as the one that the company acquires,
 - (b) whether the asset that is acquired is acquired at the time of the disposal or at any other time, or
 - (c) whether the asset that is acquired is acquired by merging two or more assets or is acquired in any other way.”.
- (9) In paragraph 143 (index of defined expressions), in the entry relating to existing asset, in the second column, for “paragraph 127” substitute “ paragraphs 127 to 127B ”.
- (10) The amendments made by this section have effect in relation to the debits or credits to be brought into account for any accounting period beginning on or after 5th December 2005 (and, in relation to the debits or credits to be brought into account for any such period, shall be deemed always to have had effect).
- (11) For this purpose an accounting period beginning before, and ending on or after, that date is treated as if—
- (a) so much of that period as falls before that date, and
 - (b) so much of that period as falls on or after that date,
- were separate accounting periods.

VALID FROM 19/07/2006

International matters

78 Controlled foreign companies and treaty non-resident companies

- (1) Section 90 of FA 2002 (controlled foreign companies and treaty non-resident companies) is amended as follows.
- (2) In subsection (2) (application of subsection (1), which inserted section 747(1B) of ICTA (disregard of section 249 of FA 1994 for most purposes of Chapter 4 of Part 17 of ICTA (controlled foreign companies))), for paragraph (b) (exclusion for companies which were non-resident immediately before 1st April 2002) substitute—
- “(b) does not apply to a company (“the non-resident company”) that—
 - (i) by virtue of section 249 of the Finance Act 1994 was treated as resident outside the United Kingdom, and not resident in the United Kingdom, immediately before that date, and
 - (ii) has not subsequently ceased to be so treated,
 unless condition A or B is met in relation to the non-resident company at any time on or after 22nd March 2006.”.
- (3) After that subsection insert—
- “(3) Condition A is met in relation to the non-resident company at any time on or after 22nd March 2006 if—

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- (a) immediately before 22nd March 2006 the non-resident company does not own directly or indirectly any company as a subsidiary company, and
 - (b) at any time on or after that date the non-resident company becomes the direct or indirect owner of a UK resident company as a subsidiary company.
- (4) Condition B is met in relation to the non-resident company at any time on or after 22nd March 2006 if—
- (a) immediately before 22nd March 2006 the non-resident company owns directly or indirectly any company as a subsidiary company (which may be a UK resident company),
 - (b) at any time (“the relevant time”) on or after that date the non-resident company becomes the direct or indirect owner of any UK resident company as a subsidiary company (or, as the case may be, another UK resident company), and
 - (c) directly or indirectly in consequence of, or otherwise in connection with, the ownership mentioned in paragraph (b) there is a qualifying change in activities.
- (5) There is a qualifying change in activities if, at the relevant time or any subsequent time,—
- (a) there is a major change in the nature, conduct or scale of the non-resident company's activities, or
 - (b) there is a major change in the nature, conduct or scale of the activities of the group of companies of which the non-resident company is a member.
- (6) In this section references to directly or indirectly owning a company are references to owning it—
- (a) directly or through another company or companies, or
 - (b) partly directly and partly through another company or companies.
- (7) In this section references to ownership are to be read as references to beneficial ownership.
- (8) In this section “UK resident company”, in relation to any time, means any company which is resident in the United Kingdom at that time.”

79 Transfer of assets abroad

Schedule 7 (which makes amendments of, or relating to, Chapter 3 of Part 17 of ICTA (transfer of assets abroad)) has effect.

Pre-owned assets

80 Restriction of exemption from charge to income tax

- (1) Schedule 15 to FA 2004 (charge to income tax on benefits received by former owner of property) is amended as follows.
- (2) In paragraph 11 (exemptions from charge)—

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- (a) in sub-paragraph (9) (meaning of “the relevant property”) for “sub-paragraphs (1) to (8)” substitute “ this paragraph ”, and
 - (b) at the end insert—
 - “(11) Sub-paragraph (12) applies where at any time—
 - (a) the relevant property has ceased to be comprised in a person's estate for the purposes of IHTA 1984, or
 - (b) he has directly or indirectly provided any consideration for the acquisition of the relevant property,
 and at any subsequent time the relevant property or any derived property is comprised in his estate for the purposes of IHTA 1984 as a result of section 49(1) of that Act (treatment of interests in possession).
 - (12) Where this sub-paragraph applies, the relevant property and any derived property—
 - (a) are not to be treated for the purposes of sub-paragraphs (1) and (2) as comprised in his estate at that subsequent time, and
 - (b) are not to be treated as falling within sub-paragraph (5) in relation to him at that subsequent time.
 - (13) For the purposes of sub-paragraphs (11) and (12) references, in relation to the relevant property, to any derived property are to other property—
 - (a) which derives its value from the relevant property, and
 - (b) whose value, so far as attributable to the relevant property, is not substantially less than the value of the relevant property.”.
- (3) In paragraph 21 (election for application of inheritance tax provisions where paragraph 3 (land) or 6 (chattels) would otherwise apply)—
- (a) in sub-paragraph (2)(b) (application of the gifts with reservation rules), in sub-paragraph (i) at the end insert “ , but only so far as the chargeable person is not beneficially entitled to an interest in possession in the property ”,
 - (b) in sub-paragraph (2)(b) for sub-paragraph (ii) and the “and” before it substitute—
 - “(ii) section 102(3) and (4) of that Act shall apply, but only so far as the chargeable person is not beneficially entitled to an interest in possession in the property, and
 - (iii) if the chargeable person is beneficially entitled to an interest in possession in the property, sections 53(3) and (4) and 54 of IHTA 1984 (which deal with cases of property reverting to the settlor etc) shall not apply in relation to the chargeable proportion of the property.”, and
 - (c) in sub-paragraph (3) (meaning of “the chargeable proportion”), after paragraph (a)(ii) insert—
 - “(iii) in the case of property in which the chargeable person is beneficially entitled to an interest in possession, to the date of his death or (if his interest comes to an end on an earlier date) that earlier date, and”.

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- (4) In paragraph 22 (election for application of inheritance tax provisions where paragraph 8 (intangible property) would otherwise apply), in sub-paragraph (2)(b) (application of the gifts with reservation rules)—
- (a) in sub-paragraph (i) at the end insert “ , but only so far as the chargeable person is not beneficially entitled to an interest in possession in the property concerned ”, and
 - (b) for sub-paragraph (ii) and the “and” before it substitute—
 - “(ii) section 102(3) and (4) of that Act shall apply, but only so far as the chargeable person is not beneficially entitled to an interest in possession in the property concerned, and
 - (iii) if the chargeable person is beneficially entitled to an interest in possession in the property concerned, sections 53(3) and (4) and 54 of IHTA 1984 (which deal with cases of property reverting to the settlor etc) shall not apply in relation to that property.”.
- (5) The amendments made by this section have effect—
- (a) for the part of the year 2005-06 beginning with 5th December 2005, and
 - (b) for the year 2006-07 and subsequent years of assessment.
- (6) If—
- (a) paragraph 11 of Schedule 15 to FA 2004 ceases, in consequence of the amendments made by this section, to apply to a person in relation to any property, and
 - (b) that person dies before the day on which this Act is passed without making an election under paragraph 21 or 22 of that Schedule in relation to that property,
- his personal representatives (within the meaning of IHTA 1984) may make any election under paragraph 21 or 22 of that Schedule that he might have made.
- (7) If—
- (a) in consequence of the amendments made by this section a person makes an election under paragraph 21 or 22 of Schedule 15 to FA 2004,
 - (b) that person dies before the day on which this Act is passed, and
 - (c) an amount of inheritance tax would (but for this subsection) fall due before that day,
- that amount is to be treated instead as falling due at the end of the period of 14 days beginning with that day.
- (8) This section is deemed to have come into force on 5th December 2005.

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