



Finance Act 2007

2007 CHAPTER 11

PART 3

INCOME TAX, CORPORATION TAX AND CAPITAL GAINS TAX

Anti-avoidance

25 Managed service companies

- (1) Schedule 3 contains provision about managed service companies.
- (2) That Schedule is deemed to have come into force on 6th April 2007.

26 Restrictions on trade loss relief for partners

Schedule 4 contains provision restricting reliefs for losses made by individuals carrying on trades in partnership.

27 Extension of restrictions on allowable capital losses

- (1) TCGA 1992 is amended as follows.
- (2) In section 8 (company's total profits to include chargeable gains)—
 - (a) in subsection (2), for the words from “does not include—” to the end substitute “does not include a loss accruing to a company in such circumstances that if a gain accrued the company would be exempt from corporation tax in respect of it.”, and
 - (b) omit subsections (2A) to (2C).
- (3) After section 16 insert—

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“16A Restrictions on allowable losses

- (1) For the purposes of this Act, “allowable loss” does not include a loss accruing to a person if—
 - (a) it accrues to the person directly or indirectly in consequence of, or otherwise in connection with, any arrangements, and
 - (b) the main purpose, or one of the main purposes, of the arrangements is to secure a tax advantage.
- (2) For the purposes of subsection (1)—

“arrangements” includes any agreement, understanding, scheme, transaction or series of transactions (whether or not legally enforceable), and

“tax advantage” means—

 - (a) relief or increased relief from tax,
 - (b) repayment or increased repayment of tax,
 - (c) the avoidance or reduction of a charge to tax or an assessment to tax, or
 - (d) the avoidance of a possible assessment to tax,

and for the purposes of this definition “tax” means capital gains tax, corporation tax or income tax.
- (3) For the purposes of subsection (1) it does not matter—
 - (a) whether the loss accrues at a time when there are no chargeable gains from which it could otherwise have been deducted, or
 - (b) whether the tax advantage is secured for the person to whom the loss accrues or for any other person.”
- (4) In section 288(1) (interpretation), in the definition of “allowable loss”, after “16” insert “, 16A”.
- (5) In section 834(1) of ICTA (interpretation of the Corporation Tax Acts), in the definition of “allowable loss”, for the words from “or a loss” to the end substitute “or a loss accruing to a company in the circumstances mentioned in section 16A of the 1992 Act”.
- (6) The amendments made by this section have effect in relation to losses accruing on disposals made on or after 6th December 2006.

28 Restriction on expenses of management

- (1) Section 75 of ICTA (expenses of management: companies with investment business) is amended as follows.
- (2) After subsection (2) insert—

“(2A) A deduction is not to be allowed under that subsection for any particular expenses of management if any part of those expenses is incurred directly or indirectly in consequence of, or otherwise in connection with, any arrangements the main purpose, or one of the main purposes, of which is to secure the allowance of a deduction (or increased deduction) under that subsection or any other tax advantage.

- (2B) Subsection (2A) above does not apply if, as a result of paragraph 7A of Schedule 23A (manufactured payments under arrangements having an unallowable purpose), the company incurring the expenses is not entitled to a relevant tax relief (within the meaning of that paragraph) in respect of, or referable to, the whole or any part of the expenses.
- (2C) The reference in subsection (2A) above to expenses of management includes amounts treated by any provision as deductible under this section.”
- (3) After subsection (5) insert—
- “(5A) For the purposes of subsection (5)(a) above investments are not held for a business or other commercial purpose if they are held directly or indirectly in consequence of, or otherwise in connection with, any arrangements the main purpose, or one of the main purposes, of which is to secure the allowance of a deduction (or increased deduction) under subsection (1) above or any other tax advantage.”
- (4) After subsection (10) insert—
- “(11) In this section—
- “arrangements” includes any agreement, understanding, scheme, transaction or series of transactions (whether or not legally enforceable), and
- “tax advantage” has the meaning given by section 840ZA.”
- (5) The amendments made by this section have effect in relation to accounting periods beginning on or after 20th June 2007, but have no effect in any case where the particular management expenses in question were paid before that date.
- (6) In the case of an accounting period of a company beginning before, and ending on or after, that date, those amendments have effect as if, for determining the amounts that are deductible for the period under section 75(1) of ICTA, so much of the period as falls before that date, and the rest of it, were separate accounting periods.

29 Life policies etc: effect of rebated or reinvested commission

- (1) In ICTA, after section 548 insert—

“548A Effect of rebated or reinvested commission in certain cases

- (1) This section applies if—
- a relevant chargeable event occurs in respect of a policy or contract,
 - commission in respect of the policy or contract has at any time been rebated or reinvested, and
 - condition A or B is met.
- (2) For the purposes of performing the calculation under section 541(1)(b) or (c) or 543(1)(a) or (b) for the chargeable event, the total amount paid under the policy or contract by way of premiums in any period is to be reduced by the total amount of commission attributable to those premiums that has been rebated or reinvested.

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- (3) Condition A is that the total amount paid under the policy or contract by way of premiums in a relevant period exceeds £100,000.
- (4) Condition B is that—
- (a) at a time when the policy or contract was the taxable person's, the taxable person's policies and contracts exceeded the relevant threshold as respects a relevant period, and
 - (b) payments under the policy or contract by way of premiums were made in that relevant period.
- (5) In subsection (4)(a) “taxable person” means the person whose policy or contract the policy or contract is, immediately before the chargeable event.
- (6) For the purposes of subsection (4)(a) a person's policies and contracts “exceed the relevant threshold” as respects a relevant period if the total amount of payments under them by way of premiums in that relevant period exceeds the sum specified in subsection (3).
- (7) In this section “relevant chargeable event” means a chargeable event within—
- (a) any of sub-paragraphs (ii) to (iv) of section 540(1)(a) (including those sub-paragraphs as they apply in relation to a qualifying policy),
 - (b) section 542(1)(a) or (b), or
 - (c) section 545(1)(a) to (c).
- (8) In this section “relevant period” means—
- (a) the period beginning with the beginning of the year of assessment in which the chargeable event occurs and ending with the chargeable event, or
 - (b) any of the 3 preceding years of assessment.
- (9) References in this section to a premium include, in relation to a contract for a life annuity, lump sum consideration.
- (10) The Treasury may by order—
- (a) substitute another sum for the sum for the time being specified in subsection (3);
 - (b) amend the definition of “relevant period”.

548B Section 548A: further definitions

- (1) This section supplements section 548A.
- (2) “Commission”, in relation to a policy or contract, includes any passing of value to or for the benefit of an intermediary, or a person connected with an intermediary, that can reasonably be taken to represent a reward in respect of the policy or contract.
- (3) Commission in respect of a policy or contract is “reinvested” if, as a result of a waiver of an entitlement to it, there is an increase in the total value of a relevant person's policies and contracts.
- (4) The amount of commission reinvested is the amount of the increase.
- (5) Commission in respect of a policy or contract is “rebated” if—

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- (a) value passes (directly or indirectly) from an intermediary, or a person connected with an intermediary, to or for the benefit of a relevant person (and the passing of value does not amount to the reinvestment of the commission), and
 - (b) the passing of value can reasonably be taken to be in respect of the commission.
- (6) The amount of commission rebated is the amount of value passed.
- (7) A policy or contract is a person's policy or contract if a gain arising in connection with it would be—
 - (a) a gain for which the person, or (if the person is an individual) the person's spouse or civil partner, would be liable to tax under Chapter 9 of Part 4 of ITTOIA 2005, or
 - (b) treated by virtue of section 547(1) above as forming part of the person's income.
- (8) Any necessary apportionment is to be made (on a just and reasonable basis) as regards—
 - (a) commission which is attributable to two or more premiums, and
 - (b) any part of such commission that has been rebated or reinvested.
- (9) Commission which is in respect of one or more policies or contracts (but is not attributable to particular premiums) is to be attributed to such premiums as is just and reasonable.
- (10) In subsections (3) and (5), "relevant person" means—
 - (a) any of the policyholders (including any of the persons who hold the contract),
 - (b) a person who beneficially owns the rights under the policy or contract,
 - (c) if those rights are held on trust, any of the trustees, or
 - (d) a person connected (within the meaning of section 839) with a person within any of paragraphs (a) to (c).
- (11) In subsections (8) and (9), references to a premium include, in relation to a contract for a life annuity, lump sum consideration."
- (2) In section 552 of that Act (information: duty of insurers), after subsection (12) insert—
 - "(13) For the purposes of this section, no account is to be taken of the effect of section 548A above or section 541A of ITTOIA 2005."
- (3) In ITTOIA 2005, after section 541 insert—

"Rebated or reinvested commission

541A Effect of rebated or reinvested commission in certain cases

- (1) This section applies if—
 - (a) a chargeable event within section 484(1)(a)(i) to (iii), (c) or (e) occurs in respect of a policy or contract,
 - (b) commission in respect of the policy or contract has at any time been rebated or reinvested, and

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- (c) condition A or B is met.
- (2) For the purposes of performing the calculation in section 494 (total allowable deductions) for the chargeable event, the total amount of premiums under the policy or contract paid in the period mentioned in section 494(1) or (2)(b) is to be reduced by the total amount of commission attributable to those premiums that has been rebated or reinvested.
- (3) Condition A is that the total amount of premiums under the policy or contract paid in a relevant period exceeds £100,000.
- (4) Condition B is that—
 - (a) at a time when the policy or contract was the taxable person's, the taxable person's policies and contracts exceeded the relevant threshold as respects a relevant period, and
 - (b) premiums under the policy or contract were paid in that relevant period.
- (5) In subsection (4)(a) “taxable person” means the person whose policy or contract the policy or contract is, immediately before the chargeable event.
- (6) For the purposes of subsection (4)(a) a person's policies and contracts “exceed the relevant threshold” as respects a relevant period if the total amount of premiums under them paid in that relevant period exceeds the sum specified in subsection (3).
- (7) In this section “relevant period” means—
 - (a) the period beginning with the beginning of the tax year in which the chargeable event occurs and ending with the chargeable event, or
 - (b) any of the 3 preceding tax years.
- (8) The Treasury may by order—
 - (a) substitute another sum for the sum for the time being specified in subsection (3);
 - (b) amend the definition of “relevant period”.

541B Section 541A: further definitions

- (1) This section supplements section 541A.
- (2) “Commission”, in relation to a policy or contract, includes any passing of value to or for the benefit of an intermediary, or a person connected with an intermediary, that can reasonably be taken to represent a reward in respect of the policy or contract.
- (3) Commission in respect of a policy or contract is “reinvested” if, as a result of a waiver of an entitlement to it, there is an increase in the total value of a relevant person's policies and contracts.
- (4) The amount of commission reinvested is the amount of the increase.
- (5) Commission in respect of a policy or contract is “rebated” if—
 - (a) value passes (directly or indirectly) from an intermediary, or a person connected with an intermediary, to or for the benefit of a relevant

- person (and the passing of value does not amount to the reinvestment of the commission), and
- (b) the passing of value can reasonably be taken to be in respect of the commission.
- (6) The amount of commission rebated is the amount of value passed.
- (7) A policy or contract is a person's policy or contract if a gain arising in connection with it would be—
- (a) a gain for which the person, or (if the person is an individual) the person's spouse or civil partner, would be liable to tax under this Chapter, or
- (b) treated by virtue of section 547(1) of ICTA as forming part of the person's income.
- (8) Any necessary apportionment is to be made (on a just and reasonable basis) as regards—
- (a) commission which is attributable to two or more premiums, and
- (b) any part of such commission that has been rebated or reinvested.
- (9) Commission which is in respect of one or more policies or contracts (but is not attributable to particular premiums) is to be attributed to such premiums as is just and reasonable.
- (10) In subsections (3) and (5), "relevant person" means—
- (a) any of the policyholders (including any of the persons who hold the contract),
- (b) a person who beneficially owns the rights under the policy or contract,
- (c) if those rights are held on trust, any of the trustees, or
- (d) a person connected with a person within any of paragraphs (a) to (c)."
- (4) The amendments made by this section have effect in relation to a policy or contract if—
- (a) it is made on or after 21st March 2007, or
- (b) on or after that date, any of its terms are varied, or a right under it is exercised, so as to increase the benefits under it.

30 Avoidance involving financial arrangements

Schedule 5 contains provision in relation to tax avoidance involving financial arrangements.

31 Companies carrying on business of leasing plant or machinery

Schedule 6 contains provision in relation to companies carrying on a business of leasing plant or machinery.

32 Restrictions on companies buying losses or gains: tax avoidance schemes

- (1) TCGA 1992 is amended as follows.

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- (2) In section 184A(2) (losses accruing on disposals of pre-change assets not deductible from gains unless gains accrue on disposals of pre-change assets), omit “unless the gains accrue to the company on a disposal of a pre-change asset”.
- (3) In section 184B(2) (losses not deductible from gains accruing on disposals of pre-change assets unless losses accrue on disposals of pre-change assets), omit “unless the loss accrues to the company on a disposal of a pre-change asset”.
- (4) Section 70 of FA 2006 (which inserted sections 184A to 184F of TCGA 1992) is amended as follows.
- (5) In subsection (9) (special provision for qualifying changes of ownership and disposals before 5th December 2005)—
- (a) for “The following subsection applies” substitute “Subsections (10) to (12) apply”,
 - (b) in paragraph (a), omit “or 184B”,
 - (c) in paragraph (c), for “at all subsequent times,” substitute “immediately afterwards,”,
 - (d) after that paragraph insert—
 - “(ca) no qualifying change of ownership occurs at any time in relation to the principal company of that group for the purposes of section 184A of TCGA 1992 directly or indirectly in consequence of, or otherwise in connection with, any arrangements the main purpose, or one of the main purposes, of which is to secure a tax advantage falling within subsection (1)(d) of that section, and”,
 - (e) omit paragraph (d) (together with the “and” following it), and
 - (f) in paragraph (e), omit “, or a qualifying gain for the purposes of section 184B of that Act.”.
- (6) For subsections (10) and (11) substitute—
- “(10) Subsection (2) of that section has effect in relation to that qualifying loss subject to the following modifications.
- (11) That subsection has effect as if there were inserted at the end of it “unless the gains accrue to the company on a disposal of a pre-change asset”.
- (12) That subsection (modified as mentioned above) has effect as if the reference to a pre-change asset included an asset held before the relevant time by any company—
- (a) which, immediately before that time, was a member of the same group of companies as the relevant company, and
 - (b) which, throughout the period beginning with that time and ending immediately after the making of the disposal referred to in that subsection, has remained under the control of the company which was the principal company of that group at the relevant time.
- (13) Expressions which are used in subsections (9) to (12) have the same meaning as in sections 184A and 184C of TCGA 1992.”
- (7) The amendment made by subsection (2) has effect in relation to gains accruing on disposals made on or after 21st March 2007.

- (8) The amendment made by subsection (3) has effect in relation to losses accruing on disposals made on or after that date.
- (9) The amendments made by subsections (5) and (6) have effect in relation to disposals made on or after that date; but the amendment made by subsection (5)(d) has no effect in relation to disposals made before 9th May 2007.

33 Lloyd’s corporate members: restriction of group relief

- (1) In FA 1994, after section 227 insert—

“227A Restriction of group relief

- (1) Losses of the last active underwriting year of a corporate member are not eligible for surrender by the corporate member as group relief to another company unless the group-relief continuity condition is satisfied.
 - (2) In this section “last active underwriting year”, in relation to a corporate member, means—
 - (a) if the corporate member writes insurance business in only one underwriting year, that underwriting year, and
 - (b) otherwise, the last underwriting year in which the corporate member writes insurance business.
 - (3) Where in an underwriting year—
 - (a) the corporate member writes an amount of insurance business which is insignificant when compared with that written by it in the preceding underwriting year, or
 - (b) the only insurance business written by the corporate member consists of the acceptance of reinsurance to close premiums,the underwriting year is not to be regarded for the purposes of subsection (2) (b) above as an underwriting year in which the corporate member writes insurance business.
 - (4) In subsection (3)(b) above “reinsurance to close premium” means a premium or other consideration under a contract in pursuance of which, in accordance with the rules or practice of Lloyd's, one underwriting member agrees with another to meet liabilities arising from the latter’s underwriting business in an underwriting year so that the accounts of the business for that year may be closed.
 - (5) The group-relief continuity condition is satisfied if the corporate member (as the surrendering company) and the other company (as the claimant company) meet the conditions in section 402(2) or (3) of the Taxes Act 1988 throughout the period—
 - (a) beginning with the last day of the last active underwriting year of the corporate member, and
 - (b) ending with the first day of the first underwriting year in which losses of the last active underwriting year are declared.”
- (2) The amendment made by subsection (1) has effect in relation to any case where the corporate member (as the surrendering company) and the other company (as the

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claimant company) first meet the conditions in section 402(2) or (3) of ICTA on or after 21st March 2007.

34 Employee benefit contributions

- (1) Schedule 24 to FA 2003 (restriction on deductions for employee benefit contributions) is amended as follows.
- (2) In paragraph 1 (restriction of deductions), for sub-paragraphs (1) and (2) substitute—
 - “(1) This Schedule applies if, in calculating for corporation tax purposes the profits of a person (“the employer”) for a period, a deduction would otherwise be allowable for the period in respect of employee benefit contributions made or to be made (but see paragraph 8).
 - (2) For the purposes of this Schedule, an “employee benefit contribution” is made if, as a result of any act or omission—
 - (a) property is held, or may be used, under an employee benefit scheme, or
 - (b) there is an increase in the total value of property that is so held or may be so used (or a reduction in any liabilities under an employee benefit scheme).”
- (3) In paragraph 3, for “the third party” substitute “a scheme manager”.
- (4) In paragraph 4—
 - (a) in sub-paragraphs (1) and (2), for “the third party” (in both places) substitute “a scheme manager”, and
 - (b) in sub-paragraph (3), for “third party” substitute “scheme manager”.
- (5) In paragraph 5, for “the third party” (in both places) substitute “a scheme manager”.
- (6) In paragraph 9(1) (interpretation)—
 - (a) after the definition of “relevant migrant member” insert—

““scheme manager” means a person who administers an employee benefit scheme (acting in that capacity);”, and
 - (b) omit the definition of “the third party”.
- (7) Part 2 of ITTOIA 2005 (trading income) is amended as follows.
- (8) In section 38 (restriction of deductions for employee benefit contributions), for subsection (1) substitute—

“(1) This section applies if, in calculating for income tax purposes the profits of a trade of a person (“the employer”) for a period, a deduction would otherwise be allowable for the period in respect of employee benefit contributions made or to be made (but see subsection (4)).”
- (9) In section 39 (making of “employee benefit contributions”), for subsection (1) substitute—

“(1) For the purposes of section 38, an “employee benefit contribution” is made if, as a result of any act or omission—

 - (a) property is held, or may be used, under an employee benefit scheme,
 - or

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- (b) there is an increase in the total value of property that is so held or may be so used (or a reduction in any liabilities under an employee benefit scheme).”
- (10) In section 41 (timing and amount of certain benefits), for “the third party” (in both places) substitute “a scheme manager”.
- (11) In section 42 (provision or payment out of employee benefit contributions)—
 - (a) in subsection (1), for “the third party”, in the first place, substitute “a scheme manager” and, in the second place, substitute “the scheme manager”,
 - (b) in subsection (3), for “the third party”, in the first place, substitute “a scheme manager” and, in the second place, substitute “the scheme manager”, and
 - (c) in subsection (5), for “third party” substitute “scheme manager”.
- (12) In section 44(1) (interpretation), for the definition of “the third party” substitute—

““scheme manager” means a person who administers an employee benefit scheme (acting in that capacity).”
- (13) The amendments made by this section have effect in relation to employee benefit contributions made on or after 21st March 2007.

35 Schemes etc designed to increase double taxation relief

- (1) Section 804ZA of ICTA (schemes and arrangements designed to increase relief) is amended as follows.
- (2) In subsection (8)(c), omit “resident in a territory outside the United Kingdom”.
- (3) After subsection (11) insert—

“(11A) In this section “foreign tax” includes any tax which for the purpose of allowing credit under any arrangements against corporation tax is treated by section 801 as if it were tax payable under the law of any territory outside the United Kingdom.”
- (4) The amendments made by this section have effect in relation to a credit for foreign tax which relates to—
 - (a) a payment of foreign tax on or after 6th December 2006, or
 - (b) income received on or after that date in respect of which foreign tax has been deducted at source,but see also subsections (6) and (7).
- (5) In subsection (4)—
 - (a) references to foreign tax are to be construed in accordance with section 804ZA(11A) of ICTA (as inserted by subsection (3) above), and
 - (b) the reference to tax deducted at source is to tax deducted (or treated as deducted) from income or treated as paid in respect of income.
- (6) The DTR anti-avoidance provisions have effect in relation to any action (or failure to act) that occurs under any scheme or arrangement on or after 6th December 2006 (as well as in relation to the cases mentioned in section 87(3) of FA 2005 or subsection (4) above).

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- (7) “The DTR anti-avoidance provisions” means section 804ZA of ICTA (as amended by this section), sections 804ZB and 80ZC of that Act and Schedule 28AB to that Act.