

**EXPLANATORY NOTE**

**CLAUSE 72: REMOVAL OF RESTRICTIONS ON  
INTEREST RELIEF**

**SUMMARY**

1. Clause 72 is linked to the anti-avoidance measures introduced by clauses 73 to 78. It removes restrictions on the amount of interest relief that an individual can claim in respect of a loan to buy into a partnership. It also disregards such interest relief in computing any restrictions on the amount of loss relief that an individual partner can set off against their other income or capital gains.
2. The clause applies to interest paid by a partner on or after 2 December 2004, and to restrictions on the amount of loss relief that a partner can set off in respect of trading losses sustained in periods beginning on or after 2 December 2004.

**DETAILS OF THE CLAUSE**

3. Subsection (1) removes references to interest relief in section 117 Income and Corporation Taxes Act 1988 (ICTA), which contains the general rules for restricting interest relief and loss relief for limited partners.
4. Subsection (2) removes references to interest relief in section 118ZB ICTA, which contains the general rules for restricting interest relief and loss relief for members of limited liability partnerships.
5. Subsection (3) removes references to interest relief in section 118ZE ICTA, which contains the general rules for restricting interest relief and loss relief for non-active partners.
6. Subsection (4) removes references to interest relief in section 118ZF ICTA, which is part of the computational rules for restricting interest relief and loss relief for non-active partners.

7. Subsection (5) removes references to interest relief in section 118ZG ICTA, which is part of the computational rules for restricting interest relief and loss relief for non-active partners.
8. Subsection (6) removes references to interest relief in section 118ZJ ICTA, which is part of the computational rules for restricting interest relief and loss relief for non-active partners.
9. Subsection (7) provides that amendments made by this section (removing references to interest relief) have effect for interest paid by a partner in a period beginning on or after 2 December 2004. The period may be a whole basis period beginning on or after that date or part of a basis period which straddles that date. The amendments also have effect in computing restrictions on the amount of loss relief that partners can claim in respect of losses sustained in periods beginning on or after 2 December 2004.
10. Subsection (8) defines “basis period”, “post-announcement loss”, “post-announcement interest” and “straddling year of assessment” for the purposes of subsection (7).
11. Subsection (9) explains how to calculate a partner’s share of the partnership’s losses for a period for the purposes of subsections (7) and (8).
12. Subsection (10) explains that the partnership in subsection (9) is the partnership as a member of which the individual carries on the trade from which the losses arise.
13. Subsection (11) gives revised statutory references in the definitions of terms for periods before the Income Tax (Trading and Other Income) Act 2005 takes effect.
14. Subsection (12) deems the amendments made by the clause to have come into force on 2 December 2004.

### **BACKGROUND NOTE**

15. Clauses 72 to 79 give effect to the scheme described in Part IV of the Technical Note “Tax avoidance using film and partnership relief” published by the Inland Revenue on 2 December 2004. They are part of a wider package of measures intended to tackle avoidance which was announced in the Pre-Budget Report 2004.

**EXPLANATORY NOTE**

**CLAUSE 73: MEANING OF "CONTRIBUTION TO THE  
TRADE"**

**SUMMARY**

1. Clause 73, together with clauses 74 to 78 inclusive, is an anti-avoidance measure concerning the extent to which individuals who have sustained losses from carrying on a trade in partnership can claim to set loss relief against their other income or capital gains. Such claims to loss relief are restricted to the amount of the partner's contribution to the trade as capital. The new rules give the Inland Revenue power to set out in regulations details of the kind of contributions which are excluded in computing the amount of the individual's contribution to the trade for this purpose. No regulations may be made unless a draft has been laid before and approved by a resolution of the House of Commons.
2. Partners whose loss relief may be restricted in this way are limited partners, members of a limited liability partnership, and other partners who do not spend a significant amount of time personally engaged in carrying on the trade.
3. The new rules apply to loss relief in respect of trading losses sustained in periods beginning on or after 2 December 2004.

**DETAILS OF THE CLAUSE**

4. Subsection (1) introduces new sections 118ZN and 118ZO into the Income and Corporation Taxes Act 1988 (ICTA).
5. New section 118ZN ICTA amends the definitions of a partner's contribution to the trade for the purposes of restrictions on loss relief claimed by limited partners, members of a limited liability partnership and non-active partners.

- a. subsection 118ZN(1) explains that the restriction provisions affected are section 117 ICTA (limited partners), section 117 as applied by section 118ZB ICTA (members of a limited liability partnership), and section 118ZE ICTA (non-active partners).
  - b. subsection 118ZN(2) gives the Inland Revenue power to set out in regulations details of the kind of contributions which are excluded in computing the amount of the individual's contribution to the trade for the purpose of the relevant restriction provisions.
  - c. subsection 118ZN(3) sets out the scope of what the regulations made under this section may make provision for, and that they may take effect from a date before that on which they are made.
  - d. subsection 118ZN(4) provides that the regulations may amend or repeal any provision of an Act passed before Finance Act 2005.
  - e. subsection 118ZN(5) provides that no regulations may be made unless a draft has been laid before and approved by a resolution of the House of Commons.
6. New section 118ZO ICTA gives the meaning of a relevant loss, to which the revised definitions of partners' capital contributions, introduced by new section 118ZN, apply.
- a. subsection 118ZO(1) defines a "relevant loss" as a loss sustained in a period beginning on or after 2 December 2004 (whether a whole basis period beginning on or after that date, or part of a basis period which straddles that date).
  - b. subsection 118ZO(2) defines "basis period", "post-announcement loss" and "straddling year of assessment" for the purposes of section 118ZO(1).
  - c. subsection 118ZO(3) explains how to calculate a partner's share of the partnership's losses for a period for this purpose.
  - d. subsection 118ZO(4) explains that the partnership in section 118ZO(3) is the partnership as a member of which the individual carries on the trade from which the losses arise.

- e. subsection 118ZO(5) gives revised statutory references in the definitions of terms for periods before the Income Tax (Trading and Other Income) Act 2005 takes effect.
- 7. Subsection (2) amends section 117 ICTA (restriction of loss relief for limited partners) so that the partner's contribution to the trade is reduced by amounts excluded by regulations made under section 118ZN ICTA.
- 8. Subsection (3) amends section 118ZC ICTA (part of the provisions restricting loss relief for members of a limited liability partnership) so that the partner's contribution to the trade is reduced by amounts excluded by regulations made under section 118ZN ICTA.
- 9. Subsection (4) amends section 118ZG ICTA (part of the provisions restricting loss relief for non-active partners) so that the partner's contribution to the trade is reduced by amounts excluded by regulations made under section 118ZN ICTA.
- 10. Subsection (5) provides that the amendments made by this clause are deemed to have come into force on 2 December 2004.

### **BACKGROUND NOTES**

- 11. Clauses 72 to 79 give effect to the scheme described in Part IV of the Technical Note "Tax avoidance using film and partnership relief" published by the Inland Revenue on 2 December 2004. They are part of a wider package of measures intended to tackle avoidance which was announced in the Pre-Budget Report 2004.

**EXPLANATORY NOTE**

**CLAUSE 74: RECOVERY OF EXCESS RELIEF GIVEN  
UNDER SECTION 380 OR 381 OF ICTA**

**SUMMARY**

1. Clause 74 is part of a group of anti-avoidance measures introduced by clauses 73 to 79 concerning the extent to which individuals who have sustained losses from carrying on a trade in partnership can claim to set loss relief against their other income or capital gains. Such claims to loss relief are restricted to the amount of the partner's contribution to the trade as capital. This clause enables excess relief to be recovered if, after loss relief has been claimed, the partner's capital contribution is reduced by the exclusion of amounts under provisions introduced under clause 73.
2. Excess relief is recovered by means of an income tax charge on the partner. The chargeable amount is computed under clause 75 and is taxable as income of the partner arising otherwise than from the trade (under Schedule D Case VI for tax years before 2005-06) for the tax year in which the relevant decrease in the partner's capital contribution occurred.
3. Partners whose excess loss relief may be recovered in this way are those who have claimed relief for trading losses sustained in periods beginning on or after 2 December 2004 during which they were limited partners, members of a limited liability partnership, or did not spend a significant amount of time personally engaged in carrying on the trade.

**DETAILS OF THE CLAUSE**

4. Subsection (1) explains the circumstances in which the clause applies to recover excess loss relief claimed by a partner against their other income and capital gains. It applies to partners whose loss relief may be restricted under any of the specified restriction

provisions, who have claimed loss relief against their other income or capital gains in respect of relevant trading losses sustained on or after 2 December 2004, and in relation to whom a chargeable event occurs after the partner has made such a claim.

5. Subsection (2) sets out the restriction provisions to which subsection (1) refers. They relate to restrictions on loss relief claimed by limited partners, members of a limited liability partnership and non-active partners (sections 117, 118ZB and 118ZE Income and Corporation Taxes Act 1988 (ICTA)).
6. Subsection (3) provides that a chargeable event occurs at any time when the total losses claimed by the partner exceed, or further exceed, the partner's capital contribution to the relevant trade as a result of a relevant decrease in the partner's contribution. A relevant decrease is defined in subsection (9) as a decrease resulting from the exclusion of amounts by the application of regulations made under new section 118ZN ICTA.
7. Subsection (4) treats the partner as receiving an amount of taxable income when a chargeable event occurs. The chargeable amount is computed under clause 75 and is taxable as income of the partner arising otherwise than from the trade (under Schedule D Case VI for tax years before 2005-06) for the tax year in which the relevant decrease in the partner's capital contribution occurs.
8. Subsection (5) defines "total losses claimed" as trading losses sustained at a time when the partner was within the scope of any of the restriction provisions, and for which the partner has claimed loss relief.
9. Subsection (6) defines "reclaimed relief" as the amount that the partner is treated as receiving as income when a chargeable event occurs. The total losses claimed are reduced by the reclaimed relief for the purposes of applying restrictions on subsequent claims to loss relief made after the chargeable event occurs.
10. Subsection (7) defines the "individual's contributions to the trade" as meaning the amount computed in accordance with the definition used in the relevant restriction provision.
11. Subsection (8) defines the "relevant restriction provision" as the restriction provision which was relevant to the loss relief claimed by the partner against other income or capital gains in respect of relevant losses sustained on or after 2 December 2004. If such

losses were sustained at different times when the partner was within the scope of different restriction provisions, and therefore different definitions of a partner's contribution to the trade applied, the relevant restriction provision is the one that applies to the most recently sustained of those losses.

12. Subsection (9) defines a “relevant decrease in the individual's contribution to the trade” which is relevant in deciding whether a chargeable event occurs under subsection (3). A relevant decrease is a decrease resulting from the exclusion of amounts from the partner's contribution by the application of regulations made under new section 118ZN ICTA.
13. Subsection (10) defines the amount of the relevant decrease in the individual's contribution to the trade, on which the chargeable amount under clause 75 (to recover excess loss relief) is based. The amount of the relevant decrease is the amount excluded by the application of regulations made under new section 118ZN ICTA.
14. Subsection (11) defines an “eligible year of assessment” for the purposes of deciding whether losses for which a partner has claimed loss relief are counted in deciding whether a chargeable event occurs under subsection (3), and in computing the chargeable amount under clause 75. An “eligible year of assessment” is one in which the losses were sustained when the partner was a limited partner, member of a limited liability partnership or a non-active partner within the scope of any of the restriction provisions.
15. Subsection (12) provides that references in clauses 73 to 75 to expressions defined in this clause are to be construed in accordance with this clause.
16. Subsection (13) deems this clause to have come into force on 2 December 2004.

### **BACKGROUND NOTES**

17. Clauses 72 to 79 give effect to the scheme described in Part IV of the Technical Note “Tax avoidance using film and partnership relief” published by the Inland Revenue on 2 December 2004. They are part of a wider package of measures intended to tackle avoidance which was announced in the Pre-Budget Report 2004.

**EXPLANATORY NOTE**

**CLAUSE 75: COMPUTING THE CHARGEABLE AMOUNT**

**SUMMARY**

1. Clause 75 is part of a group of anti-avoidance measures introduced by clauses 73 to 78 concerning the extent to which individuals who have sustained losses from carrying on a trade in partnership can claim to set loss relief against their other income or capital gains. It gives the rules for computing the amount of excess relief on which a partner is chargeable to income tax under clause 74.
2. The chargeable amount is based on the amount excluded from the partner's capital contribution to the trade as a result of provisions introduced under clause 73, but cannot exceed the total amount of loss relief that the partner has claimed in respect of losses sustained in periods beginning on or after 2 December 2004.

**DETAILS OF THE CLAUSE**

3. Subsection (1) explains that the chargeable amount, taxable under clause 74 to recover excess loss relief, is the lesser of amounts A, B and C set out in subsections (2), (3) and (4).
4. Amount A is defined in subsection (2) as the relevant decrease in the individual's contribution to the trade which resulted from amounts being excluded by the application of regulations made under new section 118ZN ICTA, and which gave rise to the chargeable event.
5. Amount B is defined in subsection (3) as the total loss relief claimed (less any reclaimed relief) in respect of losses sustained on or after 2 December 2004 by a limited partner, member of a limited liability partnership (LLP) or a non-active partner within the scope of any of the restriction provisions.

6. Amount C is defined in subsection (4) as the extent to which the total loss relief claimed (less any reclaimed relief) in respect of losses sustained at any time by a limited partner, LLP member or non-active partner within the scope of any of the restriction provisions, exceeds the partner's capital contribution to the trade .
7. Subsection (5) deems this section to have come into force on 2 December 2004.

### **BACKGROUND NOTE**

8. Clauses 72 to 79 give effect to the scheme described in Part IV of the Technical Note "Tax avoidance using film and partnership relief" published by the Inland Revenue on 2 December 2004. They are part of a wider package of measures intended to tackle avoidance which was announced in the Pre-Budget Report 2004.

## **EXPLANATORY NOTE**

### **CLAUSE 76: MEANING OF RELEVANT LOSS**

#### **SUMMARY**

1. Clause 76 is part of a group of anti-avoidance measures introduced by clauses 73 to 79 concerning the extent to which individuals who have sustained losses from carrying on a trade in partnership can claim to set loss relief against their other income or capital gains. It defines the meaning of “relevant loss” for the purpose of computing the amount of excess relief on which a partner is chargeable to income tax under clause 74.

#### **DETAILS OF THE CLAUSE**

2. Subsection (1) defines a “relevant loss”, for the purposes of recovering loss relief under clauses 74 to 75, as a loss sustained in a period beginning on or after 2 December 2004. The period may be a whole basis period beginning on or after that date or part of a basis period which straddles that date.
3. Subsection (2) defines “basis period”, “post-announcement loss” and “straddling year of assessment” for the purposes of deciding whether a loss is a relevant loss under subsection (1).
4. Subsection (3) explains how to calculate a partner’s share of the partnership’s losses for the purposes of subsections (1) and (2).
5. Subsection (4) explains that the partnership in subsection (3) is the partnership as a member of which the individual carried on the trade from which the losses arise.
6. Subsection (5) deems this section to have come into force on 2 December 2004.

**BACKGROUND NOTE**

7. Clauses 72 to 79 give effect to the scheme described in Part IV of the Technical Note “Tax avoidance using film and partnership relief” published by the Inland Revenue on 2 December 2004. They are part of a wider package of measures intended to tackle avoidance which was announced in the Pre-Budget Report 2004.

**EXPLANATORY NOTE**

**CLAUSE 77: TRANSITIONAL PROVISION FOR YEARS  
OF ASSESSMENT BEFORE THE YEAR 2005-06**

**SUMMARY**

1. Clause 77 is part of a group of anti-avoidance measures introduced by clauses 73 to 79 concerning the extent to which individuals who have sustained losses from carrying on a trade in partnership can claim to set loss relief against their other income or capital gains. It gives revised definitions of terms used elsewhere in clauses 73 to 79 which apply for periods before the Income Tax (Trading and Other Income) Act 2005 (ITTOIA) takes effect.

**DETAILS OF THE CLAUSE**

2. Subsection (1) provides that this clause relates to years of assessment which are before the year 2005-06 and therefore before ITTOIA takes effect.
3. Subsection (2) sets out the pre-ITTOIA wording for clause 72(4) which provides that excess loss is recovered by means of the partner being treated as receiving an amount of income chargeable to income tax under Case VI of Schedule D.
4. Subsection (3) sets out the pre-ITTOIA wording for clause 74 which relates to the meaning of a “relevant loss”.
5. Subsection (4) deems this section to have come into force on 2 December 2004.

**BACKGROUND NOTES**

6. Clauses 72 to 79 give effect to the scheme described in Part IV of the Technical Note “Tax avoidance using film and partnership

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relief” published by the Inland Revenue on 2 December 2004. They are part of a wider package of measures intended to tackle avoidance which was announced in the 2004 Pre-Budget Report.

## **CLAUSE 78: CONSEQUENTIAL AMENDMENTS**

### **SUMMARY**

1. Clause 78 is part of a group of anti-avoidance measures introduced by clauses 72 to 79 concerning the extent to which individuals who have sustained losses from carrying on a trade in partnership can claim to set loss relief against their other income or capital gains. It makes consequential amendments to loss relief restrictions and taxable amounts which are based on the amount of loss relief a partner has previously claimed, to take account of excess relief recovered under clause 72.

### **DETAILS OF THE CLAUSE**

2. Subsection (1) makes consequential amendments to section 117 Income and Corporation Taxes Act 1988 (ICTA) so that account is taken of any reclaimed relief in computing any restrictions on subsequent loss relief claims made after the chargeable event (which gave rise to the reclaimed relief) occurred.
3. Subsection (2) makes similar consequential amendments to section 118ZF ICTA which applies to non-active partners.
4. Subsection (3) makes consequential amendments to section 121 Finance Act 2004 (definition of “the losses claimed” in computing film exit charges) so that account is taken of loss relief reclaimed by means of an income tax charge under clause 74, to the extent that the reclaimed relief relates to film-related losses.
5. Subsection (4) deems this section to have come into force on 2 December 2004.

### **BACKGROUND NOTE**

6. Clauses 72 to 79 give effect to the scheme described in Part IV of the Technical Note “Tax avoidance using film and partnership relief” published by the Inland Revenue on 2 December 2004.

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They are part of a wider package of measures intended to tackle avoidance which was announced in the Pre-Budget Report 2004.

**EXPLANATORY NOTE**

**CLAUSE 79: MEANING OF "CAPITAL CONTRIBUTION  
TO THE TRADE"**

**SUMMARY**

1. Clause 79 is an anti-avoidance measure which applies to individuals who have sustained "film-related" losses in carrying on a trade in partnership and who dispose of their rights to future profits from the trade in circumstances covered by section 119 of Finance Act 2004. Amounts chargeable to income tax under section 119 in connection with film exit events are based on the extent to which the loss relief claimed by the partner exceeds the amount of their contribution to the trade as capital. This clause gives the Inland Revenue power to set out in regulations details of the kind of contributions which are excluded in computing the amount of the partner's contribution to the trade for this purpose. No regulations may be made unless a draft has been laid before and approved by a resolution of the House of Commons.
2. Losses are film-related under sections 119 to 123 of Finance Act 2004 if the profits or losses of the trade are computed in accordance with the film tax reliefs in section 40A to 40C and 41 to 43 Finance (No 2) Act 1992, and section 48 Finance (No 2) Act 1997.

**DETAILS OF THE CLAUSE**

3. Subsection (1) introduces a new section 122A into the Finance Act 2004 (FA 2004).
4. New section 122A FA 2004 amends the definition of a partner's contribution to the trade as capital for the purposes of deciding whether a film exit charge arises under section 119 FA 2004 and calculating the amount of such a charge.

- a. subsection 122A(1) explains that the section applies where an individual who is carrying on a trade in partnership makes a claim to loss relief in respect of a film-related loss (as defined in section 123 FA 2004).
  - b. subsection 122A(2) gives the Inland Revenue power to set out in regulations details of the kind of contributions which are to be excluded in computing the amount of the individual's contribution to the trade, for the purposes of determining whether a film exit event occurs on or after 2 December 2004 and calculating the chargeable amount under section 119 FA 2004.
  - c. subsection 122A(3) sets out the scope of what the regulations made under this section may make provision for, and that they may take effect from a date before that on which they are made.
  - d. subsection 122A(4) provides that the regulations may amend or repeal any provision of an Act passed before Finance Act 2005.
  - e. subsection 122A(5) provides that no regulations may be made unless a draft has been laid before and approved by a resolution of the House of Commons.
5. Subsection (2) amends section 121 FA 2004 (definition of "the individual's capital contribution to the trade" for the purposes of a film exit charge) so that a partner's contribution is reduced by amounts excluded by regulations made under section 122A FA 2004.
  6. Subsection (3) makes consequential amendments to the definition of a film-related loss in section 123(1) FA 2004.
  7. Subsection (4) deems the amendments made by this clause to have come into force on 2 December 2004.

### **BACKGROUND NOTE**

8. Clauses 72 to 79 give effect to the scheme described in Part IV of the Technical Note "Tax avoidance using film and partnership relief" published by the Inland Revenue on 2 December 2004.

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CLAUSE 79**

They are part of a wider package of measures intended to tackle avoidance which was announced in the Pre-Budget Report 2004.