

Bill 6

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PART 4

LOSS RELIEF

CHAPTER 1

OVERVIEW

1 Overview of Part [j4500rm]

- (1) This Part provides corporation tax relief for –
 - (a) losses made in a trade (see Chapter 2 as well as the restrictions on relief in Chapter 3 relating to limited partnerships and limited liability partnerships),
 - (b) losses made in a UK property business or overseas property business (see Chapter 4), and
 - (c) losses made in certain miscellaneous transactions (see Chapter 5).

Origin: Drafting.

- (2) This Part also provides for the reduction of available relief if there is a write-off of government investment in a company (see Chapter 6).

Origin: Drafting.

- (3) For rules about the calculation of losses for the purposes of this Part, see –
 - (a) [section {j030302}] of [Bill 5] (losses of a trade calculated on same basis as profits), and
 - (b) [section {j050202}] of [Bill 5] (which applies [section {j030302}] of that Act, so that losses of a UK property business or overseas property business are calculated on the same basis as profits).

Origin: ICTA s.393(7), s.393A(9); drafting.

- (4) See also Part [19] of [Bill 5] for rules about how to calculate the losses of a company that is a partner in a firm.

Origin: Drafting.

CHAPTER 2

TRADE LOSSES

*Overview etc***2 Overview of Chapter etc [j4501rm]**

- (1) This Chapter –
- provides relief against a company's total profits of an accounting period for a loss made by the company in a trade in that or a subsequent accounting period (see sections 3 to 14),
 - provides relief against a company's profits of a trade of an accounting period for a loss made by the company in the trade in a previous accounting period (see sections 15 and 16), and
 - contains a restriction on those reliefs relating to leasing contracts and company reconstructions (see section 17).

Origin: Drafting.

- (2) In this Chapter “trade” includes an office.

Origin: ICTA s.6(4), s.834(2).

- (3) See also section 28 (in Chapter 4) which treats UK furnished holiday lettings businesses as trades for the purposes of this Part.

Origin: Drafting.

*Trade loss relief against total profits***3 Relief for trade losses against total profits [j4505rm]**

- (1) This section applies if, in an accounting period (“the loss-making period”), a company carrying on a trade makes a loss in the trade.

Origin: ICTA s.393A(1).

- (2) The company may make a claim for relief for the loss under this section (but see subsection (5)).

Origin: ICTA s.393A(1).

- (3) If the company makes a claim, the relief is given by deducting the loss in calculating the company's net profits of –

- the loss-making period, and
- if the claim so requires, previous accounting periods so far as they fall (wholly or partly) within the period of 12 months ending immediately before the loss-making period begins.

(See [Step 2] of the calculation in section [j9009] (calculation of corporation tax liability).)

Origin: ICTA s.6(4), s.393A(1), (2), s.834(2); drafting.

- (4) The amount of a deduction to be made under subsection (3) for any accounting period is the amount of the loss so far as it cannot be deducted under that subsection for a subsequent accounting period.

Origin: ICTA s.393A(1).

- (5) The company may not make a claim if, in the loss-making period, the company carries on the trade wholly outside the United Kingdom.

Origin: ICTA s.393A(3).

- (6) A deduction under subsection (3)(b) may be made for an accounting period only if the company –
- (a) carried on the trade in the period, and
 - (b) did not do so wholly outside the United Kingdom.

Origin: ICTA s.393A(1), (3); drafting.

- (7) The company's claim must be made no later than –
- (a) two years after the end of the loss-making period, or
 - (b) such later time as an officer of Revenue and Customs may allow.

Origin: ICTA s.393A(10); Annex 1, Change jc601.

- (8) If, for an accounting period, deductions under subsection (3) are to be made for losses in different accounting periods, the deductions are to be made in the order in which the losses were made (starting with the earliest loss).

Origin: ICTA s.393A(1).

- (9) For the purposes of this section and sections 5 and 7, a company carries on a trade if the company carries on the trade so as to be within the charge to corporation tax in relation to the trade.

Origin: ICTA s.393A(9).

- (10) This section needs to be read with –
- section 4 (limit on deduction for accounting period falling partly within 12 month period),
 - section 5 (which extends the scope of relief for terminal losses),
 - section 6 (which extends the scope of relief for losses made in ring fence trades),
 - section 7 (which extends the time for making a claim in some cases if the trade is a ring fence trade),
 - section 8 (which requires the trade to be carried on on a commercial basis or for the purposes of statutory functions),
 - sections 9 to 13 (which restrict the application of this section if the trade is a trade of farming or market gardening),
 - section 14 (which restricts the application of this section if the trade is a trade of dealing in commodity futures),
 - section 17 (which places a restriction on relief in cases involving leasing contracts and company reconstructions),
 - Chapter 3 (which restricts the amount of relief which can be given in cases involving limited partnerships and limited liability partnerships), and
 - [section 492(3) of ICTA] (treatment of oil extraction activities for tax purposes).

Origin: Drafting.

4 Limit on deduction if accounting period falls partly within 12 month period [j4503rm]

- (1) This section applies if an accounting period falls partly within the period of 12 months mentioned in section 3(3)(b).

Origin: ICTA s.393A(2).

- (2) The amount of the deduction for the loss for the accounting period is not to exceed an amount equal to the relevant proportion of the company's total profits of that period.

Origin: ICTA s.393A(2).

- (3) The relevant proportion is the same as the proportion that the part of the accounting period falling within the period of 12 months bears to the whole of the accounting period.

Origin: ICTA s.393A(2).

5 Terminal losses: extension of periods for which relief may be given [j4506rm]

- (1) This section applies if—
(a) a company ceases to carry on a trade, and
(b) the company has made a terminal loss in the trade.

Origin: ICTA s.393A(2B).

- (2) Sections 3(3)(b) and 4(1) and (3) have effect in relation to the terminal loss as if the references to 12 months were references to three years.

Origin: ICTA s.393A(2A).

- (3) The following are terminal losses made in the trade—
(a) the whole of any loss made by the company in the trade in an accounting period that begins during the final 12 months, and
(b) the relevant proportion of any loss made by the company in the trade in an accounting period that ends, but does not begin, during the final 12 months.

Origin: ICTA s.393A(2B).

- (4) The relevant proportion is the same as the proportion that the part of the accounting period falling within the final 12 months bears to the whole of the accounting period.

Origin: ICTA s.393A(2B).

- (5) “The final 12 months” means the period of 12 months ending when the company ceases to carry on the trade.

Origin: ICTA s.393A(2B).

6 Ring fence trades: extension of periods for which relief may be given [j4506Arm]

- (1) This section applies if—

- (a) in an accounting period a company makes a loss in a ring fence trade (as defined in section 162 of CAA 2001),
- (b) the accounting period is an accounting period for which an allowance under section 164 of CAA 2001 is made to the company, and
- (c) the loss is not wholly a terminal loss (see section 5(3) above).

Origin: ICTA s.393A(2C), (12).

- (2) Sections 3(3)(b) and 4(1) and (3) have effect in relation to the loss as if the references to 12 months were references to three years.

Origin: ICTA s.393A(2A).

- (3) But if the loss exceeds the allowance mentioned in subsection (1)(b), subsection (2) applies in relation to the loss only so far as it does not exceed that allowance.

Origin: ICTA s.393A(2C).

- (4) If a part of the loss is a terminal loss, references to the loss in subsections (2) and (3) are to be read as references to the part of the loss that is not a terminal loss.

Origin: ICTA s.393A(2C).

7 Ring fence trades: modification of time for making claim [\[j4506Brm\]](#)

- (1) This section applies if—
 - (a) as a result of section 165 of CAA 2001 a company's qualifying expenditure for the accounting period in which it ceases to carry on a ring fence trade (as defined in section 162 of that Act) is increased by any amount, or
 - (b) as a result of section 416 of CAA 2001 any expenditure is treated as qualifying expenditure of a company incurred on the last day of trading.

Origin: ICTA s.393A(11), (12).

- (2) For the purpose of determining by when the company must make a claim under section 3 so far as the claim relates to—
 - (a) the increase mentioned in subsection (1)(a) of this section, or
 - (b) the expenditure mentioned in subsection (1)(b) of this section,the reference in subsection (7)(a) of section 3 to two years is to be read as a reference to five years.

Origin: ICTA s.393A(11).

8 Trade must be commercial or carried on for statutory functions [\[j4507rm\]](#)

- (1) Relief under section 3 is not available for a loss made in a trade unless for the loss-making period the trade is carried on—
 - (a) on a commercial basis, and
 - (b) with a view to the making of a profit in the trade or so as to afford a reasonable expectation of making such a profit.

Origin: ICTA s.393A(3), (4).

- (2) References in subsection (1)(b) to a profit in the trade include references to a profit in any larger undertaking of which the trade forms part.

Origin: ICTA s.393A(3).

- (3) If during the loss-making period there is a change in the way in which the trade is carried on, it is treated as having been carried on throughout that period in the way in which it is being carried on by the end of that period.

Origin: ICTA s.393A(4).

- (4) The restriction on relief under this section does not apply if the trade is a trade carried on in the exercise of functions conferred by or under an Act (including an Act of the Scottish Parliament).

Origin: ICTA s.393A(3); Annex 1, Change jc619.

9 Restriction on relief in case of farming or market gardening [j4508rm]

- (1) This section applies if a loss is made in a trade of farming or market gardening in an accounting period (“the current period”).

Origin: Drafting.

- (2) Relief under section 3 is not available for the loss if a loss, calculated without regard to capital allowances, was made in the trade—
- (a) in the current period, and
 - (b) in each accounting period falling wholly or partly within the period of five years (“the prior 5 years”) ending immediately before the current period begins.

Origin: ICTA s.397(2), (5); drafting.

- (3) But this section does not prevent relief for the loss from being available if—
- (a) the carrying on of the trade forms part of, and is ancillary to, a larger trading undertaking,
 - (b) the farming or market gardening activities meet the reasonable expectation of profit test (see section 10), or
 - (c) the trade was started, or treated as started, during the prior 5 years (see section 11).

Origin: ICTA s.397(3), (4), (8).

- (4) A loss in a trade is calculated without regard to capital allowances by ignoring—
- (a) the allowances treated as expenses of the trade under CAA 2001, and
 - (b) the charges treated as receipts of the trade under CAA 2001.

Origin: ICTA s.397(7).

10 Reasonable expectation of profit [j4509rm]

- (1) This section explains how the farming or market gardening activities (“the activities”) meet the reasonable expectation of profit test for the purposes of section 9(3)(b).

Origin: Drafting.

- (2) The test is decided by reference to the expectations of a competent farmer or market gardener (a “competent person”) carrying on the activities.

Origin: Drafting.

- (3) The test is met if –
- (a) a competent person carrying on the activities in the year (“the current year”) after the prior 5 years would reasonably expect future profits (see subsection (4)), but
 - (b) a competent person carrying on the activities at the start of the prior period of loss (see subsection (5)) could not reasonably have expected the activities to become profitable until after the end of the current year.

Origin: ICTA s.397(3).

- (4) In determining whether a competent person carrying on the activities in the current year would reasonably expect future profits, regard must be had to –
- (a) the nature of the whole of the activities, and
 - (b) the way in which the whole of the activities were carried on in the current year.

Origin: ICTA s.397(3).

- (5) “The prior period of loss” means –
- (a) the prior 5 years, or
 - (b) if subsection (6) applies, the period made up of the successive accounting periods taken together as mentioned in that subsection.

Origin: ICTA s.397(5).

- (6) This subsection applies if –
- (a) losses in the trade, calculated without regard to capital allowances (see section 9(4)), were made in successive accounting periods before the current year, and
 - (b) taken together those accounting periods amount to a period of more than five years ending at the end of the prior 5 years.

Origin: ICTA s.397(5); drafting.

11 Cessation of trades [j4505Arm]

- (1) If there is a change in the persons carrying on a trade which involves all of the persons carrying it on before the change ceasing to carry it on, for the purposes of section 9(3)(c) –
- (a) the trade is treated as ceasing to be carried on, and
 - (b) a new trade is treated as starting to be carried on,
- at the date of the change.

Origin: ICTA s.397(8).

- (2) Further, if under any other provision of the Tax Acts, a trade is treated as ceased and a new trade is treated as started for any purpose, then the trade is treated as ceased and the new trade is treated as started for the purposes of section 9(3)(c) (if that is not the case in any event).

Origin: ICTA s.397(8).

- (3) Subsections (1) and (2) are subject to subsections (4) to (6).

Origin: Drafting.

- (4) Subsection (5) applies if, as a result of [section 343(2) of ICTA], a trade is not to be treated as ceased nor a new trade treated as started for the purposes of capital allowances and charges.

Origin: ICTA s.397(9).

- (5) For the purposes of section 9(3)(c) the trade is not to be treated as ceased and no new trade is to be treated as started.

Origin: ICTA s.397(9).

- (6) In determining if there is a change in the persons carrying on a trade—
- (a) subsection (1) applies subject to the rules set out in section 12, and
 - (b) for the purposes of subsection (2), the other provisions of the Tax Acts are to be applied subject to those rules.

Origin: ICTA s.397(10).

12 Rules treating certain persons as the same person [j4510rm]

- (1) These are the rules mentioned in section 11(6).

Rule 1

A husband and wife are treated as the same person.

Rule 2

Individuals who are civil partners of each other are treated as the same person.

Rule 3

A husband or wife is treated as the same person as—

- (a) a company of which either of them has control, or
- (b) a company of which both have control.

Rule 4

An individual's civil partner is treated as the same person as—

- (a) a company of which either of the civil partners has control, or
- (b) a company of which both have control.

Origin: ICTA s.397(10).

- (2) “Control” is defined in [section 416 of ICTA].

Origin: ICTA s.397(10).

13 Companies treated as same person as individual [j4516rm]

- (1) This section applies for the purposes of sections 9(2) and 10(6) if, as a result of section 12, a company is treated as the same person as an individual.

Origin: ICTA s.397(10); drafting.

- (2) A loss in an accounting period may be determined by reference to profits and losses made by the individual in the trade in tax years (within the meaning of the Income Tax Acts).

Origin: ICTA s.397(10); drafting.

- (3) For this purpose –
- (a) profits and losses made by the individual in tax years may be allocated (in whole or in part) to accounting periods in a way that is just and reasonable, and
 - (b) if a tax year or part of a tax year is not covered by any accounting period –
 - (i) the period covered by the tax year or part may be treated as if it were an accounting period, and
 - (ii) in accordance with paragraph (a), profits and losses may be allocated to it.

Origin: ICTA s.397(10); drafting.

- (4) Section 70(2), (3)(a), (4)(a) and (5) of ITA 2007 applies for the purpose of determining the individual's profits and losses in the trade for tax years.

Origin: Drafting.

14 Dealings in commodity futures [j4512rm]

- (1) This section applies if –
- (a) a company makes a loss in a trade of dealing in commodity futures,
 - (b) the company carried on the trade as a partner in a firm, and
 - (c) arrangements within subsection (3) have been made.
- Origin: ICTA s.399(2).
- (2) Relief under section 3 is not available for the loss.
- Origin: ICTA s.399(2).
- (3) Arrangements are within this subsection if as a result of them –
- (a) the sole benefit, or
 - (b) the main benefit,
- that might be expected to arise to the company from the company's interest in the firm is the obtaining of a reduction in tax liability by means of relief under section 3.
- Origin: ICTA s.399(2).
- (4) "Arrangements" includes any agreement, understanding, scheme, transaction or series of transactions (whether or not legally enforceable).
- Origin: ICTA s.399(2); drafting.
- (5) If relief is given in a case to which this section applies, the relief is withdrawn by the making of an assessment to corporation tax under this section.
- Origin: ICTA s.399(3); drafting.
- (6) "Commodity futures" means commodity futures that are for the time being dealt in on a recognised futures exchange (as defined in section 288(6) of TCGA 1992).

Origin: ICTA s.399(5).

*Carry-forward trade loss relief***15 Carry forward of trade loss against subsequent trade profits [j4513rm]**

- (1) This section applies if, in an accounting period, a company carrying on a trade makes a loss in the trade.

Origin: ICTA s.393(1).

- (2) Relief for the loss is given to the company under this section.

Origin: ICTA s.393(1).

- (3) The relief is given for that part of the loss (“the unrelieved loss”) for which no relief is given under section 3.

Origin: ICTA s.393(1).

- (4) For this purpose –

- (a) the unrelieved loss is carried forward to subsequent accounting periods (so long as the company continues to carry on the trade), and
- (b) the profits of the trade of any such period are reduced by the unrelieved loss so far as that loss cannot be used under this paragraph to reduce the profits of an earlier period.

Origin: ICTA s.393(1), (8).

- (5) In this section and section 16 –

- (a) references to a company carrying on a trade are references to the company carrying on the trade so as to be within the charge to corporation tax in relation to the trade, and
- (b) references to profits of the trade are references to profits of the trade chargeable to corporation tax.

Origin: ICTA s.393(8), (10).

- (6) This section needs to be read with –

section 16 (use of trade-related interest and dividends if insufficient trade profits),
section 17 (which places a restriction on relief in cases involving leasing contracts and company reconstructions), and
Chapter 6 (which reduces the relief available in cases involving a write-off of government investment in a company).

Origin: Drafting.

16 Use of trade-related interest and dividends if insufficient trade profits [j4514rm]

- (1) This section applies for the purposes of section 15 if –
- (a) the company carries on the trade in an accounting period (“the later period”), and
 - (b) relief cannot be fully given in the later period for the unrelieved loss (or for that loss so far as it cannot be relieved in earlier periods) because there are no profits, or insufficient profits, of the trade of the later period.

Origin: ICTA s.393(8).

- (2) Treat any interest or dividends within subsection (3) as profits of the trade of the later period.

Origin: ICTA s.393(8).

- (3) Interest or dividends are within this subsection if they –
- (a) are from investments, and
 - (b) would be brought into account as trading receipts in calculating the profits of the trade of the later period but for the fact that they have been subjected to tax under other provisions of the Tax Acts.

Origin: ICTA s.393(8).

Leasing contracts and company reconstructions

17 Restriction on relief under sections 3 and 15 [j4515rm]

- (1) This section applies if –
- (a) under a contract a company (“the leasing company”) incurs capital expenditure on the provision of plant and machinery,
 - (b) the leasing company lets that plant and machinery to another person under another contract (“the leasing contract”),
 - (c) a first-year allowance (within the meaning of Part 2 of CAA 2001) in relation to the capital expenditure is made to the leasing company for an accounting period (“the allowance period”),
 - (d) arrangements within subsection (3) are in place in the allowance period, and
 - (e) apart from this section, relief under section 3 or 15 would be available to the leasing company in relation to losses made on the leasing contract.

Origin: ICTA s.395(1).

- (2) In the allowance period and any subsequent accounting period, no relief is available to the leasing company as mentioned in subsection (1)(e) except against profits (if any) arising under the leasing contract.

Origin: ICTA s.395(1).

- (3) Arrangements are within this subsection if, as a result of them, a successor company will be able to carry on, at some time during or after the allowance period, any part of the leasing company’s trade which includes the performance of all or any of the obligations which (apart from the arrangements) would be the leasing company’s obligations under the leasing contract.

Origin: ICTA s.395(1).

- (4) A company (“company S”) is a successor company if –
- (a) [section 343 of ICTA] applies in relation to the leasing company and company S as, respectively, the predecessor and the successor within the meaning of that section, or
 - (b) the leasing company and company S are connected with each other in accordance with [section 839 of ICTA].

Origin: ICTA s.395(2).

- (5) “Arrangements” includes any agreement, understanding, scheme, transaction or series of transactions (whether or not legally enforceable).

Origin: ICTA s.395(5); drafting.

- (6) For the purposes of this section, calculate losses made on the leasing contract and profits arising under that contract as if –
- (a) the performance of that contract were a trade carried on by the leasing company separately from any other trade carried on by it, and
 - (b) the leasing company started carrying on that separate trade at the commencement of the letting under that contract.

Origin: ICTA s.395(3).

- (7) In determining if relief is available to the leasing company as mentioned in subsection (1)(e), any losses made on the leasing contract are treated as made in a trade carried on by the leasing company separately from any other trade carried on by it.

Origin: ICTA s.395(4).

CHAPTER 3

LIMITED PARTNERS AND MEMBERS OF LIMITED LIABILITY PARTNERSHIPS

Overview

18 Overview of Chapter etc [\[j4701rm\]](#)

- (1) This Chapter restricts the amount of relief that may be given for any loss made by a company in a trade carried on by the company –
- (a) as a limited partner (see sections 19 to 21), or
 - (b) as a member of a limited liability partnership (an “LLP”) (see sections 22 to 24).

Origin: Drafting.

- (2) References in this Chapter to a firm are to be read in the same way as references to a firm in Part [\[19\]](#) of [\[Bill 5\]](#).

Origin: Drafting.

Limited partners

19 Restriction on reliefs for limited partners [\[j4702rm\]](#)

- (1) This section applies if –
- (a) at a time in an accounting period a company carries on a trade (“the relevant trade”) as a limited partner in a firm, and
 - (b) the company makes a loss in the relevant trade in that period (“the loss-making period”).

Origin: ICTA s.118(1), (2).

- (2) There is a restriction on the amount of relief that may be given for the loss –
- (a) under section 3 (relief for trade losses against total profits) other than against profits of the relevant trade, or
 - (b) under [Part []] (group relief).

Origin: ICTA s.118(1).

- (3) The restriction is that the sum of –
- (a) the amount of the relief given, and
 - (b) the total amount of all other relevant relief given (see subsection (4)),
- must not exceed the company's contribution to the firm as at the time mentioned in subsection (5).

Origin: ICTA s.118(1), (2); Annex 1, Change jc620.

- (4) "Relevant relief" means relief under section 3 or [Part []] (group relief) for a loss made in the relevant trade by the company in an accounting period at a time during which it carries on that trade as a limited partner.

Origin: ICTA s.118(2).

- (5) The time referred to in subsection (3) is –
- (a) the end of the loss-making period, or
 - (b) if the company ceases to carry on the relevant trade during that period, when it does so.

Origin: ICTA s.118(2).

- (6) If the firm is carrying on, or has carried on, other trades apart from the relevant trade, for the purpose of determining the total amount of all other relevant relief, apply subsection (4) in relation to each other trade as well as the relevant trade and then add the results together.

Origin: Annex 1, Change jc620.

20 Meaning of "contribution to the firm" [j4703rm]

- (1) For the purposes of section 19 the company's contribution to the firm is the sum of amounts A and B.

Origin: Drafting.

- (2) Amount A is the amount which the company has contributed to the firm as capital less so much of that amount (if any) as is within subsection (4).

Origin: ICTA s.118(3); Annex 1, Change jc620.

- (3) In particular, the company's share of any profits of the firm is to be included in the amount which the company has contributed to the firm as capital so far as that share has been added to the firm's capital.

Origin: Annex 1, Change jc620.

- (4) An amount of capital is within this subsection if it is an amount which the company –
- (a) has previously drawn out or received back,
 - (b) is or may be entitled to draw out or receive back at any time when the company is carrying on a trade as a limited partner in the firm, or

(c) is or may be entitled to require another person to reimburse to it.

Origin: ICTA s.118(3); Annex 1, Change jc620.

- (5) In subsection (4) any reference to drawing out or receiving back an amount is to doing so directly or indirectly but does not include drawing out or receiving back an amount which, because of its being drawn out or received back, is chargeable to tax as profits of a trade.

Origin: ICTA s.118(3); Annex 1, Change jc618.

- (6) Amount B is the amount of the company's total share of profits within subsection (7) except so far as –
- (a) that share has been added to the firm's capital, or
 - (b) the company has received that share in money or money's worth.

Origin: ICTA s.118(3); Annex 1, Change jc620.

- (7) Profits are within this subsection if they are from the relevant trade.

Origin: ICTA s.118(3).

- (8) In determining the amount of the company's total share of profits within subsection (7) ignore the company's share of any losses from the relevant trade which would (apart from this subsection) reduce that amount.

Origin: Annex 1, Change jc620; drafting.

- (9) In subsections (3), (7) and (8) any reference to profits or losses are to profits or losses calculated in accordance with generally accepted accounting practice (before any adjustment required or authorised by law in calculating profits or losses for tax purposes).

Origin: Annex 1, Change jc620; drafting.

- (10) If the firm is carrying on, or has carried on, other trades apart from the relevant trade, subsections (7) and (8) have effect as if references to the relevant trade were references to the relevant trade or any of the other trades.

Origin: Annex 1, Change jc620.

21 Meaning of “limited partner” [j4704rm]

- (1) In sections 19 and 20 “limited partner” means a company which carries on a trade –
- (a) as a limited partner in a limited partnership registered under the Limited Partnerships Act 1907 (c. 24),
 - (b) as a partner in a firm which in substance acts as a limited partner in relation to the trade (see subsection (2)), or
 - (c) while the condition mentioned in subsection (3) is met in relation to the company.

Origin: ICTA s.118(2).

- (2) A company in substance acts as a limited partner in relation to a trade if the company –
- (a) is not entitled to take part in the management of the trade, and

- (b) is entitled to have any liabilities (or those beyond a certain limit) for debts or obligations incurred for the purposes of the trade met or reimbursed by some other person.

Origin: ICTA s.118(2).

- (3) The condition referred to in subsection (1)(c) is that—
 - (a) the company carries on the trade jointly with other persons,
 - (b) under the law of a territory outside the United Kingdom, the company is not entitled to take part in the management of the trade, and
 - (c) under that law, the company is not liable beyond a certain limit for debts or obligations incurred for the purposes of the trade.

Origin: ICTA s.118(2).

- (4) In the case of a company which is a limited partner as a result of subsection (1)(c), references in sections 19 and 20 to the firm are to be read as references to the relationship between the company and the other persons mentioned in subsection (3)(a).

Origin: Annex 1, Change jc620; drafting.

Members of LLPs

22 Restriction on relief for members of LLPs [j4705rm]

- (1) This section applies if—
 - (a) a company carries on a trade (“the relevant trade”) as a member of an LLP at a time in an accounting period, and
 - (b) the company makes a loss in the relevant trade in that period (“the loss-making period”).

Origin: ICTA s.118(1), (2), s.118ZB.

- (2) There is a restriction on the amount of relief that may be given for the loss—
 - (a) under section 3 (relief for trade losses against total profits) other than against profits of the relevant trade, or
 - (b) under [Part []] (group relief).

Origin: ICTA s.118(1).

- (3) The restriction is that the sum of—
 - (a) the amount of the relief given, and
 - (b) the total amount of all other relevant relief given (see subsection (4)),must not exceed the company’s contribution to the LLP as at the time mentioned in subsection (5).

Origin: ICTA s.118(1), (2), s.118ZB.

- (4) “Relevant relief” means relief under section 3 or [Part []] (group relief) for a loss made in the relevant trade by the company in an accounting period at a time during which it carries on that trade as a member of an LLP.

Origin: ICTA s.118(2).

- (5) The time mentioned in subsection (3) is—
 - (a) the end of the loss-making period, or

- (b) if the company ceases to carry on the relevant trade during that period, when it does so.

Origin: ICTA s.118(2), s.118ZB.

- (6) If the LLP is carrying on, or has carried on, other trades apart from the relevant trade, for the purpose of determining the total amount of all other relevant relief, apply subsection (4) in relation to each other trade as well as the relevant trade and then add the results together.

Origin: Annex 1, Change jc620.

23 Meaning of “contribution to the LLP” [j4706rm]

- (1) For the purposes of section 22 the company’s contribution to the LLP at any time (“the relevant time”) is the sum of amounts A and B.

Origin: Drafting.

- (2) Amount A is the amount which the company has contributed to the LLP as capital less so much of that amount (if any) as is within subsection (5).

Origin: ICTA s.118ZB, s.118ZC(1), (2), (3).

- (3) In particular, the company’s share of any profits of the LLP is to be included in the amount which the company has contributed to the LLP as capital so far as that share has been added to the LLP’s capital.

Origin: Annex 1, Change jc620.

- (4) In subsection (3) the reference to profits is to profits calculated in accordance with generally accepted accounting practice (before any adjustment required or authorised by law in calculating profits for tax purposes).

Origin: Drafting.

- (5) An amount of capital is within this subsection if it is an amount which the company –
- has previously drawn out or received back,
 - draws out or receives back during the period of five years beginning with the relevant time,
 - is or may be entitled to draw out or receive back at any time when it is a member of the LLP, or
 - is or may be entitled to require another person to reimburse to it.

Origin: ICTA s.118ZC(3).

- (6) In subsection (5) any reference to drawing out or receiving back an amount is to doing so directly or indirectly but does not include drawing out or receiving back an amount which, because of its being drawn out or received back, is chargeable to tax as profits of a trade.

Origin: ICTA s.118ZC(3); Annex 1, Change jc618.

- (7) Amount B is the amount of the company’s liability on a winding up of the LLP so far as that amount is not included in amount A.

Origin: ICTA s.118ZB(1), s.118ZC(1), (2).

- (8) For the purposes of subsection (7) the amount of the company’s liability on a winding up of the LLP is the amount which –
- (a) the company is liable to contribute to the assets of the LLP in the event of the LLP being wound up, and
 - (b) the company remains liable to contribute for the period of at least five years beginning with the relevant time (or until the LLP is wound up, if that happens before the end of that period).

Origin: ICTA s.118ZC(4).

24 Unrelieved losses brought forward [j4707rm]

- (1) This section applies if –
- (a) a company (“the member company”) carries on a trade as a member of an LLP at a time during an accounting period (“the current period”), and
 - (b) as a result of section 22, relief under section 3 or [Part []] (group relief) has not been given for an amount of loss made in the trade by the member company as a member of the LLP in a previous accounting period.

Origin: ICTA s.118ZD(1), (2); drafting.

- (2) For the purpose of determining the relief under section 3 or [Part []] (group relief) to be given to any company, the amount of loss is treated as having been made by the member company in the current period so far as it is not excluded by subsection (3) or (4).

Origin: ICTA s.118ZD(1), (2); drafting.

- (3) An amount of loss is excluded so far as –
- (a) under this section the amount has been treated as made by the member company in a previous accounting period, and
 - (b) as a result of that, relief under section 3 or [Part []] (group relief) has been given for the amount or would have been given had a claim been made.

Origin: ICTA s.118ZD(3).

- (4) An amount of loss is also excluded so far as, other than as a result of this section, relief under the Corporation Tax Acts has been given for the amount.

Origin: ICTA s.118ZD(3).

CHAPTER 4

PROPERTY BUSINESS LOSSES

UK property businesses

25 Relief for losses made in UK property business [j4101rm]

- (1) This section applies if, in an accounting period, a company carrying on a UK property business makes a loss in the business.

Origin: ICTA s.392A(1), (4).

- (2) Relief for the loss is given to the company under this section.

Origin: ICTA s.392A(1).

- (3) The relief is given by deducting the loss in calculating the company's net profits of the accounting period.

Origin: ICTA s.6(4), s.392A(1), s834(2); drafting.

- (4) Subsection (5) applies if –

- (a) not all the loss can be deducted as mentioned in subsection (3), and
- (b) the company continues to carry on the UK property business in the next accounting period.

Origin: ICTA s.392A(2).

- (5) So far as the loss cannot be deducted, it –

- (a) is carried forward to the next accounting period, and
- (b) is treated for the purposes of this section as a loss made by the company in the UK property business in that period.

Origin: ICTA s.392A(2).

- (6) This section needs to be read with –

section 26 (which deals with cases involving a company with investment business),
 section 27 (which requires the business to be carried on on a commercial basis or in the exercise of statutory functions),
 section 28 (which treats UK furnished holiday lettings businesses as trades for the purposes of this Part), and
 Chapter 6 (which reduces the relief available in cases involving a write-off of government investment in a company).

Origin: Drafting.

26 **Company with investment business ceasing to carry on UK property business** [j4101Arm]

- (1) This section applies if, in an accounting period, a company with investment business (as defined in [section 130 of ICTA]) –
- (a) ceases to carry on a UK property business but continues to be a company with investment business, and
 - (b) as a result of the company ceasing to carry on the UK property business, an amount of loss made in carrying on that business cannot be carried forward to the next accounting period for the purposes of section 25.

Origin: ICTA s.392A(3), (4).

- (2) The amount of loss –

- (a) is, nevertheless, carried forward to the next accounting period, and
- (b) is treated for the purposes of [section 75 of ICTA] as an expense of management deductible for that period.

Origin: ICTA s.392A(3).

27 UK property business to be commercial or carried on for statutory functions [j4103Arm]

- (1) Sections 25 and 26 apply to a UK property business only so far as it is carried on –
- (a) on a commercial basis, or
 - (b) in the exercise of functions conferred by or under an Act (including an Act of the Scottish Parliament).

Origin: ICTA s.392A(5), (7); Annex 1, Change jc619.

- (2) A business (or part) is not carried on on a commercial basis unless it is carried on with a view to making a profit or so as to afford a reasonable expectation of making a profit.

Origin: ICTA s.392A(6).

- (3) If during an accounting period there is a change in the way in which a business (or part) is carried on, it is treated as having been carried on throughout that period in the way in which it is being carried on by the end of that period.

Origin: ICTA s.392A(6).

28 UK furnished holiday lettings business treated as trade [j4104rm]

- (1) This section applies if a company carries on a UK furnished holiday lettings business.

Origin: ICTA s.503(1).

- (2) “UK furnished holiday lettings business” means a UK property business so far as it consists of the commercial letting of furnished holiday accommodation (within the meaning of [Chapter 6 of Part 4] of [Bill 5]).

Origin: ICTA s.503(1).

- (3) For the purposes of this Part the company is treated as carrying on a single trade –

- (a) which consists of every commercial letting of furnished holiday accommodation comprised in the company’s UK furnished holiday lettings business, and
- (b) in relation to which the company is within the charge to corporation tax under [Chapter 2 of Part 3] of [Bill 5].

Origin: ICTA s.503(1).

- (4) Accordingly, sections 25 to 27 apply in relation to the company’s UK property business as if the lettings mentioned in subsection (3)(a) were not included in it.

Origin: ICTA s.503(1), (5); drafting.

- (5) If there is a letting of accommodation only part of which is furnished holiday accommodation, just and reasonable apportionments are to be made for the purpose of determining what is comprised in the trade treated as carried on.

Origin: ICTA s.503(4).

- (6) If the company carries on more than one UK furnished holiday lettings business, apply subsections (3) to (5) separately in relation to each such business.

Origin: Drafting.

Overseas property businesses

29 Relief for losses made in overseas property business [j4102rm]

- (1) This section applies if, in an accounting period, a company carrying on an overseas property business makes a loss in the business.

Origin: ICTA s.392B(1).

- (2) Relief for the loss is given to the company under this section.

Origin: ICTA s.392B(1).

- (3) For this purpose –

- (a) the loss is carried forward to subsequent accounting periods, and
- (b) the profits of the business of any such period are reduced by the loss so far as it cannot be used under this paragraph to reduce the profits of the business of an earlier period.

Origin: ICTA s.392B(1).

- (4) This section needs to be read with –

- (a) section 30 (which requires the business to be carried on on a commercial basis or in the exercise of statutory functions), and
- (b) Chapter 6 (which reduces the relief available in cases involving a write-off of government investment in a company).

Origin: Drafting.

30 Overseas property business to be commercial or carried on for statutory functions [j4103rm]

- (1) Section 29 applies to an overseas property business only so far as it is carried on –

- (a) on a commercial basis, or
- (b) in the exercise of functions conferred by or under an Act (including an Act of the Scottish Parliament) or by or under the law of a territory outside the United Kingdom.

Origin: ICTA s.392A(5), (7), s.392B(2); Annex 1, Changes jc619, jc621.

- (2) A business (or part) is not carried on on a commercial basis unless it is carried on with a view to making a profit or so as to afford a reasonable expectation of making a profit.

Origin: ICTA s.392A(6), s.392B(2).

- (3) If during an accounting period there is a change in the way in which a business (or part) is carried on, it is treated as having been carried on throughout that period in the way in which it is being carried on by the end of that period.

Origin: ICTA s.392A(6), s.392B(2).

CHAPTER 5

LOSSES FROM MISCELLANEOUS TRANSACTIONS

31 Relief for losses from miscellaneous transactions [j4551rm]

- (1) This section applies if, in an accounting period (“the loss-making period”), a company makes a loss in a relevant transaction.

Origin: ICTA s.396(1).

- (2) A transaction is a relevant one if income arising from it would be miscellaneous income of the company.

Origin: ICTA s.396(1).

- (3) Relief for the loss is given to the company under this section.

Origin: ICTA s.396(1).

- (4) For this purpose the company’s miscellaneous income of the loss-making period is reduced by the loss.

Origin: ICTA s.396(1).

- (5) Subsection (6) applies to the loss so far as it cannot be used under subsection (4) to reduce the company’s income.

Origin: ICTA s.396(1).

- (6) The loss –

- (a) is carried forward to subsequent accounting periods, and
- (b) the company’s miscellaneous income of any such period is reduced by the loss so far as it cannot be used under this paragraph to reduce the income of an earlier period.

Origin: ICTA s.396(1).

- (7) A company’s miscellaneous income is so much of the company’s income which –

- (a) arises from transactions, and
- (b) is chargeable to corporation tax as a result of Chapter [5] of Part [10] of [Bill 5] (income not otherwise charged).

Origin: ICTA s.396(1).

CHAPTER 6

WRITE-OFF OF GOVERNMENT INVESTMENT

32 Loss relief to be reduced in case of write-off of government investment [j4601rm]

- (1) This section applies if an amount of government investment in a company (“the written-off amount”) is written off.

The company mentioned in this subsection is called “the relevant company”.

Origin: ICTA s.400(1).

- (2) The written-off amount is set off against the relevant company’s carry-forward losses as at the end of the accounting period ending last before the day of the write-off.

Origin: ICTA s.400(1).

- (3) If the written-off amount exceeds those losses, the excess is set off against the relevant company’s carry-forward losses as at the end of the next accounting period and so on until the whole of the written-off amount has been set off.

Origin: ICTA s.400(1).

- (4) In this Chapter “company” has the meaning given by [section 832(1) of ICTA] but does not include an unincorporated association.

Origin: ICTA s.400(10).

- (5) This section needs to be read with—
 - section 33 (which applies if the relevant company is in a group of companies),
 - section 34 (which explains what is meant by government investment being written off and how the written-off amount is calculated), and
 - section 35 (which explains what is meant by carry-forward losses).

Origin: Drafting.

33 Groups of companies [j4601Arm]

- (1) This section applies if—
 - (a) at the end of an accounting period the relevant company is in a group of companies, and
 - (b) under section 32(2) or (3) an amount could be set off against the relevant company’s carry-forward losses as at the end of that period (or could be so set off if there were enough of those losses).

Origin: ICTA s.400(5).

- (2) The amount may be set off (wholly or partly) against the carry-forward losses of one or more companies within subsection (3), as may be just and reasonable.

Origin: ICTA s.400(5).

- (3) A company (other than the relevant company) is within this subsection if at the end of the accounting period it is in the group of companies.

Origin: ICTA s.400(5).

- (4) “A group of companies” consists of a company that has one or more 51% subsidiaries, together with that or those subsidiaries.

Origin: ICTA s.400(10).

34 Cases in which government investment is written off [j4602rm]

- (1) Government investment in a company is written off if any of the following occurs in relation to the company.
This is subject to subsection (2).

Case 1

The company's liability to repay any money lent to it out of public funds by a Minister is extinguished.

In this case the written-off amount is the amount of the liability extinguished and the write-off occurs when the liability is extinguished.

Case 2

Any of the company's shares for which a Minister has subscribed out of public funds are cancelled.

In this case the written-off amount is the amount subscribed for the shares and the write-off occurs when the shares are cancelled.

Case 3

The company's commencing capital debt (see subsection (3)) is reduced otherwise than by being paid off or its public dividend capital (see subsection (4)) is reduced otherwise than by being repaid.

In this case the written-off amount is the amount of the reduction and the write-off occurs when the reduction occurs.

Origin: ICTA s.400(7).

- (2) The written-off amount is reduced so far as it is replaced by –
- (a) money lent, or a payment made, out of public funds, or
 - (b) shares subscribed for by a Minister for money or money's worth.

Origin: ICTA s.400(9).

- (3) "Commencing capital debt" means a debt to a Minister assumed as such under an enactment.

Origin: ICTA s.400(8).

- (4) "Public dividend capital" means an amount paid by a Minister –
- (a) under an enactment in which that amount is so described, or
 - (b) under an enactment corresponding to an enactment in which a payment made on similar terms to another body is so described.

Origin: ICTA s.400(8).

- (5) In this section –
- "enactment" includes an Act of the Scottish Parliament, and
 - "Minister" means a Minister of the Crown, the Scottish Ministers or a Northern Ireland department.

Origin: ICTA s.400(7), (8), (9), (10); drafting.

35 Meaning of "carry-forward losses" [j4603rm]

- (1) A company's carry-forward losses as at the end of an accounting period are as follows.

Type 1

Losses of the company to be carried forward under section 15, 25 or 29 to the next accounting period.

These include losses to be treated as expenses of management of the company under section 26 for the next accounting period.

Type 2

Any excess of the company to be carried forward to the next accounting period under [section 75(9) of ICTA].

Type 3

Any excess of the company to be carried forward for deduction to the next accounting period under section 260(2) of CAA 2001.

Type 4

Any amount paid by way of charges on the company's income so far as it exceeds the company's profits of the accounting period and is available for surrender for the next accounting period under Part [] (group relief).

Type 5

Allowable losses of the company available under section 8 of TCGA 1992 so far as not allowed for the accounting period or any previous accounting period.

Origin: ICTA s.400(2).

- (2) For the purposes of section 32(2) an amount is excluded from the relevant company's carry-forward losses if, before the day of the write-off, a claim is made in relation to the amount under section 3 or Part [] (group relief) of this Act or section 260(3) of CAA 2001.

Origin: ICTA s.400(4).

- (3) But, for the purposes of section 32(3), any such claim made on or after that day is to be disregarded in determining the relevant company's carry-forward losses as at the end of any accounting period.

Origin: ICTA s.400(4).

- (4) The set off of an amount against a company's carry-forward losses as at the end of any accounting period is to be done –
 first, against those within Types 1 to 4, and
 second, against those within Type 5.

Origin: ICTA s.400(3).

36 Interaction with other tax provisions [j4604rm]

- (1) A company, in calculating its profits of a trade for corporation tax purposes, is not prevented from deducting a sum just because an amount of government investment in the company is written off.

Origin: ICTA s.400(6).

- (2) Subsection (3) applies for the purposes of section 50 of TCGA 1992 and section 532 of CAA 2001 in their application in relation to a company.

Origin: ICTA s.400(6).

- (3) Expenditure is not met by a public body (as defined in section 532(2) of CAA 2001) just because an amount of government investment in the company is written off.

Origin: ICTA s.400(6).

- (4) Section 80(5) of FA 1996 does not prevent section 32 of this Act from applying if the writing-off of an amount of government investment in a company involves the extinguishment (in whole or in part) of a liability under a loan relationship.

[Origin: ICTA s.400\(9A\).](#)