

# Bill 6

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## PART 1

### TAX AVOIDANCE: MISCELLANEOUS RULES

#### CHAPTER 1

##### COMPANIES IN PARTNERSHIP

###### *Underallocation of profit combined with return of capital*

#### **1 Charge to tax where return of capital exceeds contribution [j9401]**

- (1) In the circumstances specified in subsections (2) to (5), corporation tax is charged in accordance with subsection (6).

*Origin:* FA 2004 s.131(1).

- (2) A company that is or has been a member of a partnership –
- (a) directly or indirectly draws out or receives back any capital from the partnership, or
  - (b) receives consideration for a disposal of all or any of its interest in the partnership.

*Origin:* FA 2004 s.131(1).

- (3) Immediately after the capital is drawn out or received back or, as the case may be, the consideration is received (“the relevant time”), the sum of –
- (a) the total amount of any post-commencement withdrawals (see section 3(2)), and
  - (b) the total amount or value of any post-commencement consideration (see section 3(3)),
- exceeds the company’s investment in the partnership (see section 3(4)).

*Origin:* FA 2004 s.131(1), (2).

- (4) The excess referred to in subsection (3), or any part of that excess, results directly or indirectly from an arrangement under which any relevant partnership profit (see section 3(5) and (6)) was shared in such a way that the company was not allocated all or part of its due share of the profit (see section 3(7) to (10)).

*Origin:* FA 2004 s.131(1).

- (5) If the company’s due shares of relevant partnership profits had been allocated to it, some or all of them would have been chargeable to corporation tax.

*Origin:* FA 2004 s.131(1).

- (6) The company is treated as receiving, at the relevant time, an amount –

- (a) which is equal to the chargeable amount (see section 2), and
- (b) to which the charge to corporation tax on income applies.

Origin: FA 2004 s.131(4).

- (7) Subsection (6) does not apply if and to the extent that the chargeable amount is brought into account under [section 91H or 91I of the Finance Act 1996].

Origin: FA 2004 s.131(10).

## 2 The chargeable amount [j9402]

- (1) The chargeable amount for the purposes of section 1 is so much of the excess return of capital as does not exceed the underallocation of profit (subject to subsection (6)).

Origin: FA 2004 s.131(5); drafting.

- (2) The excess return of capital is the amount by which, at the relevant time, the sum of –
  - (a) the total amount of any post-commencement withdrawals, and
  - (b) the total amount or value of any post-commencement consideration, exceeds the company’s investment in the partnership.

Origin: FA 2004 s.131(5); drafting.

- (3) The underallocation of profit is the amount by which, at the relevant time, the total amount of the company’s due shares of relevant partnership profits exceeds the total amount of the shares of relevant partnership profits that were actually allocated to the company.

Origin: FA 2004 s.131(5); drafting.

- (4) Subsection (5) applies if an amount is taken into account in computing a relevant partnership profit that would not be taken into account as income, or in calculating income, for corporation tax purposes (a “non-income amount”).

Origin: FA 2004 s.131(6), (7); drafting.

- (5) For the purposes of subsection (3) the amount of the company’s due share of a relevant profit and the amount of the share of a relevant profit that was actually allocated to the company are to be taken to be what they would have been if all non-income amounts had been left out of account in computing the relevant profit.

Origin: FA 2004 s.131(6).

- (6) If section 1 applies on more than one occasion in relation to the same company and partnership (whether because of two or more receipts by the company of consideration relating to the same disposal or for any other reason), on each occasion after the first, the amount found under subsection (1) is to be reduced (but not below nil) by the chargeable amounts found under that subsection on the previous occasions.

Origin: FA 2004 s.131(8), (9).

- (7) In this section “the relevant time” has the meaning given by section 1(3).

Origin: FA 2004 s.131(2).

### 3 Interpretation of sections 1 and 2 [j9403]

- (1) This section applies for the purposes of sections 1 and 2.

[Origin: Drafting.](#)

- (2) References to a post-commencement withdrawal are to any capital that the company has, directly or indirectly, drawn out or received back from the partnership at any time on or after 17 March 2004 (“the starting date”).

[Origin: FA 2004 s.131\(2\).](#)

- (3) References to post-commencement consideration are to consideration received by the company, at any time on or after the starting date, for the disposal on or after that date of all or any of its interest in the partnership.

[Origin: FA 2004 s.131\(2\).](#)

- (4) References to the company’s investment in the partnership are to the sum of—
- (a) the amount that the company has contributed to the partnership as capital (excluding any amount originally contributed by a person from whom the company acquired an interest in the partnership), and
  - (b) any amount paid by the company to such a person for such an interest.

[Origin: FA 2004 s.131\(2\).](#)

- (5) References to a relevant partnership profit are to the profit of the partnership computed for any period, but does not include any profit, or any part of a profit, that derives from income arising before the starting date.

[Origin: FA 2004 s.131\(2\).](#)

- (6) For the purposes of subsection (5), if a profit for a period derives partly from income arising before the starting date, the part of the profit that derives from such income is to be determined on such basis as is just and reasonable.

[Origin: FA 2004 s.132\(3\).](#)

- (7) References to the company’s due share of any relevant partnership profit are to the share of the profit that the company would have been allocated if it had been allocated a share calculated by reference to the percentage of the total capital contributed that was contributed by it.

[Origin: FA 2004 s.131\(2\).](#)

- (8) For the purposes of subsection (7) the capital contributed by the company is to be taken to include amounts originally contributed by a person from whom the company acquired an interest in the partnership.

[Origin: FA 2004 s.132\(4\).](#)

- (9) To find “the total capital contributed” for the purposes of subsection (7)—
- (a) find, as respects the end of each day in the period for which the profit was calculated, the total amount of capital that at that time had been contributed to the partnership and had not been drawn out or received back,
  - (b) aggregate those amounts, and
  - (c) divide by the number of days in that period.

[Origin: FA2004 s.131\(3\).](#)

- (10) The reference in subsection (9) to capital that had been contributed includes amounts purporting to be provided by way of loan where the loan –
- (a) carries no interest, or
  - (b) carries interest at a rate less than that which might have been expected if the loan had been between independent persons dealing at arm's length.

Origin: FA 2004 s.132(5).

#### 4 Supplementary provisions [j9404]

- (1) A partnership is to be treated for the purposes of sections 1 to 3 as the same partnership notwithstanding a change in membership if any person who was a member before the change remains a member after it.

Origin: FA 2004 s.132(6).

- (2) If a partnership is dissolved by reason of one of the partners acquiring the interests of the others, the remaining partner is to be treated for the purposes of sections 1 to 3 as having drawn out all the partners' shares of capital from the partnership.

Origin: FA 2004 s.132(2).

- (3) In sections 1 to 3 and this section "capital" includes –
- (a) anything accounted for as partners' capital, or partners' equity, in the accounts of the partnership drawn up in accordance with generally accepted accounting practice, or
  - (b) if no such accounts are drawn up, anything that would be so accounted for if such accounts had been drawn up.

Origin: FA 2004 s.132(1).

*Interrelation of charge under section 1 with TCGA 1992*

#### 5 Effect on computations for purposes of section 8(1) of TCGA [j9405a]

- (1) This section applies if conditions A, B and C are met.
- (2) Condition A is that section 1 applies as a result of a receipt by a company that is or has been a member of a partnership of any consideration for a disposal of all or any of its interest in the partnership ("the section 1 disposal").

Origin: FA 2004 s.133(1).

- (3) Condition B is that a chargeable gain accrues to the company on a disposal of an asset that, alone or together with other disposals of assets, constitutes the section 1 disposal (an "included disposal").

Origin: FA 2004 s.133(1), (2).

- (4) Condition C is that the total amount of chargeable gains accruing to the company on included disposals exceeds the total amount of any allowable losses accruing to it on such disposals.

Origin: FA 2004 s.133(1).

- (5) Any chargeable gain accruing to the company on an included disposal must be excluded in computing, for the purposes of section 8(1) of TCGA 1992, the total amount of chargeable gains accruing to the company in the accounting period in which the gain accrued.

Origin: FA 2004 s.133(3).

- (6) Any allowable loss accruing to the company on an included disposal must be excluded in computing, for the purposes of section 8(1) of TCGA 1992, the amount of any allowable losses.

Origin: FA 2004 s.133(3).

- (7) The amount found in accordance with subsection (8) must be included in computing, for the purposes of section 8(1) of TCGA 1992, the total amount of chargeable gains accruing to the company in the accounting period in which the receipt mentioned in subsection (2) above occurred.

Origin: FA 2004 s.133(3).

- (8) To find the amount referred to –
- (a) take the amount by which the total amount of chargeable gains accruing to the company on included disposals exceeds the total amount of allowable losses accruing to it on such disposals, and
  - (b) reduce it (but not below nil) by the amount found under section 2 in relation to the receipt mentioned in subsection (2) above.

Origin: FA 2004 s.133(4), (10).

- (9) In subsection (3) references to a disposal of an asset are to be read in accordance with TCGA 1992.

Origin: FA 2004 s.133(2).

## 6 Application of section 5 if same disposal gives rise to multiple receipts [j9405c]

- (1) This section applies if sections 1 and 5 apply more than once as a result of two or more receipts by a company of consideration relating to the same disposal.

Origin: FA 2004 s.133(6).

- (2) Section 5(7) does not apply in relation to any of the receipts after the first.

Origin: FA 2004 s.133(6).

- (3) In relation to the first receipt, the amount to be deducted under section 5(8)(b) above is an amount equal to the total of the chargeable amounts found in relation to the receipts.

Origin: FA 2004 s.133(6).

- (4) In subsection (3) “the chargeable amount”, in relation to a receipt of consideration relating to a disposal, means the amount found under section 2 in relation to the receipt.

Origin: FA 2004 s.133(10).

## 7 Deductibility of allowable losses if deduction prevented by section 5 [j9405e]

- (1) This section applies if section 5 prevents an allowable loss that accrued to a company otherwise than on a disposal which is an included disposal (as defined by subsection (3) of that section) from being deductible from a chargeable gain accruing to the company on such a disposal.

Origin: FA 2004 s.133(7).

- (2) To the extent that the loss has not been deducted from any other chargeable gain, it is deductible instead from the total amount of chargeable gains accruing to the company in the accounting period in which the receipt mentioned in section 5(2) occurred.

Origin: FA 2004 s.133(8).

- (3) But, if the case is one where there are one or more allowable losses that are losses to which section 18(3) of TCGA 1992 applies (transactions between connected persons), the total amount deducted under subsection (2) in respect of those losses must not exceed the amount found in accordance with section 5(8).

Origin: FA 2004 s.133(9).

## 8 Effect on sections 37(1) and 39(1) of TCGA [j9405b]

- (1) Subsection (2) applies if section 1 applies as a result of a receipt by a company that is or has been a member of a partnership of any consideration for a disposal of all or any of its interest in the partnership.

Origin: FA 2004 s.133(5).

- (2) In computing any chargeable gain or allowable loss accruing to the company on a disposal of an asset that, alone or together with other disposals of assets, constitutes the disposal referred to in subsection (1) –
- (a) neither the chargeable amount, nor any amount taken into account in calculating it, is to be excluded by section 37(1) of TCGA 1992 (exclusions from consideration), and
  - (b) an amount that has been taken into account in calculating the chargeable amount is not by reason of that fact to be excluded by section 39(1) of TCGA 1992 (exclusions from allowable deductions).

Origin: FA 2004 s.133(2), (5).

- (3) In subsection (2) –
- “the chargeable amount” means the amount found under section 2 in relation to the receipt mentioned in subsection (1),
- references to a disposal of an asset are to be read in accordance with TCGA 1992.

Origin: FA 2004 s.133(2), (10).

## 9 Interpretation of sections 5 to 8 [j9405d]

In sections 5 to 8 references to chargeable gains, or allowable losses, accruing on disposals are to be read in accordance with TCGA 1992.

Origin: FA 2004 s.133(10).

## SCHEDULES

### SCHEDULE 1

Section [jref]

MINOR AND CONSEQUENTIAL AMENDMENTS [j2 (ss. 131 TO 133 FA 2004)]

#### PART 1

OTHER ENACTMENTS (SS. 131 TO 133 FA 2004)

- 1 (1) The Finance Act 2004 is amended as follows.
- (2) Omit sections 131 to 133 (companies in partnership).

### SCHEDULE 2

Section [jref]

TRANSITIONALS AND SAVINGS ETC [j3 (ss. 131 TO 133 FA 2004)]

#### PART 1

TAX AVOIDANCE: COMPANIES IN PARTNERSHIP

*Disregard of consideration for disposal before 17 March 2004*

- 1 Section 1(2)(b) does not apply in relation to consideration for a disposal before 17 March 2004.

Origin: FA 2004 s.131(1).

### SCHEDULE 3

Section [jref]

REPEALS [j4 (ss. 131 TO 133 FA 2004)]

#### PART 1

SECTIONS 131 TO 133 FA 2004

<i>Short title and chapter</i>	<i>Extent of repeal</i>
Finance Act 2004 (c. 12)	Sections 131 to 133.
Finance Act 2008 (c. 9)	In Schedule 22, paragraph 17(2).