

Chapter [1]: Transfers of relief within partnerships

Overview

1. This Chapter deals with arrangements within firms for transferring relief between partners.

Clause 1: Application

2. This clause sets the scope of the Chapter. It is based on section 116(1) of ICTA.

Clause 2: Arrangements for transfer of relief

3. This clause sets out the sorts of arrangements to which the Chapter applies. It is based on section 116(1) of ICTA.

4. *Subsection (1)* identifies four effects that the arrangements may have. Effects 1 and 2 correspond to paragraph (b) of section 116(1) of ICTA; Effects 3 and 4 correspond to paragraph (a) of section 116(1) of ICTA.

5. *Subsection (2)* makes clear that the Chapter operates by reference to *part* of a company's share of the firm's profits or losses as it operates by reference to the whole of the profits or losses. So the Bill does not reproduce from section 116(1) of ICTA the following unnecessary variations:

- “the value of” a share in a profit or loss;
- “the cost of” a share in a loss; or
- “any portion of” any of the profits or losses.

6. *Subsection (4)* is the rule that a payment for group relief (see also clause 89, published with committee paper CC/SC (07) 27) does not trigger the anti-avoidance rules in this Chapter.

7. Capital allowances are given as a deduction in calculating profits. So [Bill 5] did not rewrite the rule in section 114(1)(b) and (2) of ICTA that gives special treatment to capital allowances. The same applies to balancing charges, which are treated as a business receipt. It follows that there is no need for this Bill to rewrite the corresponding rule in section 116(5) of ICTA.

Clause 3: Restrictions on use of reliefs

8. This clause sets out the results if this Chapter applies. It is based on section 116(2) of ICTA.

9. *Subsection (1)* is the rule about the firm's losses. The partner company's share of the firm's trading loss is available only against its share of profits from the same trade. This means that a claim may be made under clause 15 (losses carried forward,

published with committee paper CC/SC (07) 38) but not under clause 3 (relief against total profits, published with committee paper CC/SC (07) 38).

10. *Subsection (3)* is the rule about the firm's profits. It isolates the partner company's share of the profits from reliefs that would otherwise be available (unless they are losses of the firm's trade available in accordance with subsection (1)). So the partner company may not set against its share of the firm's profits either:

- trading losses of another trade (paragraph (a) of the subsection); or
- other reliefs (paragraph (b) of the subsection).

11. The subsection reproduces the effect of section 116(2) of ICTA. That is that the trading losses and other reliefs may be set off only against so much of the company partner's total profits as do not arise from its share of the firm's profits.

Clause 4: Non-trading profits and losses

12. This clause extends the Chapter so that it applies to non-trading activities carried on in partnership as it applies to trades. It is based on section 116(4) of ICTA.

13. *Subsection (1)* identifies the non-trading profits to which the Chapter applies. They are the profits that are charged to corporation tax under [Chapter 5 of Part 10 of Bill 5] (income not otherwise charged).

14. *Subsection (3)* is a rule for "special leasing" allowances within section 259 or 260 of CAA. The partner company's share of the allowances is not available against the partner company's other profits.

Clause 5: Interpretation

15. This clause provides some definitions. It is based on section 116(6) of ICTA.

16. The definition of "arrangements" ("arrangements means arrangements ...") in section 116(6) of ICTA is not particularly clear. But it is clear that it is intended to cover the sort of agreement, understanding etc referred to in section 403G of ICTA (inserted by FA 2006). So *subsection (1)* takes the more modern definition of "arrangements" from section 403G of ICTA. The same definition is used consistently in the group relief Part.

17. The fuller definition of "arrangements" means that it is not necessary to reproduce the words "whether as part of the terms of the partnership or otherwise" in the opening words of section 116(1) of ICTA.

18. *Subsection (2)* is a link with [Part 19 of Bill 5] (partnerships). In particular, "accounting period of a firm" is explained in clause 246 (published with committee paper CC/SC (07) 38) as meaning the accounting period of the company that is deemed to carry on the firm's trade.

19. The definition of “connected person” in [section 839 of ICTA] applies for this Chapter as a result of clause [not in this print].