

Relief to individuals on loans applied in acquiring interest in partnerships. FA74 s36 253.—(1) This section shall apply to a loan to an individual to defray money applied—

(a) in purchasing a share in a partnership,

(b) in contributing money to a partnership by means of capital or a premium, or in advancing money to the partnership, where the money contributed or advanced is used wholly and exclusively for the purposes of the trade or profession carried on by the partnership, or

(c) in paying off another loan where relief could have been obtained under this section for interest on that other loan if it had not been paid off (on the assumption, if the loan was free of interest, that it carried interest).

(2) Relief shall be given in respect of any payment of interest by the individual on the loan if—

(a) throughout the period from the application of the proceeds of the loan until the interest was paid the individual has personally acted in the conduct of the trade or profession carried on by the partnership as a partner therein, and

(b) the individual shows that in that period he or she has not recovered any capital from the partnership, apart from any amount taken into account under subsection (3).

(3) (a) Where at any time after the application of the proceeds of the loan the individual has recovered any amount of capital from the partnership without using that amount in repayment of the loan, the individual shall be treated for the purposes of this section as if he or she had at that time repaid that amount out of the loan, and accordingly there shall be deducted out of the interest otherwise eligible for relief and payable for any period after that time an amount equal to interest on the amount of capital so recovered.

(b) Where part only of a loan fulfils the conditions in this section so as to afford relief for interest on that part, the deduction to be made under this subsection shall be made wholly out of interest on that part.

(4) (a) The individual shall be treated as having recovered an amount of capital from the partnership if—

(i) the individual receives a consideration of that amount or value for the sale of any part of his or her interest in the partnership,

(ii) the partnership returns any amount of capital to the individual or repays any amount advanced by the individual, or

(iii) the individual receives a consideration of that amount or value for assigning any debt due to the individual from the partnership.

(b) In the case of a sale or assignment otherwise than by means of a bargain made at arm's length, the sale or assignment shall be deemed to be for consideration of an amount equal to the market value of what is disposed of.

(5) Subsections (2) to (4) shall apply to a loan referred to in subsection (1)(c) as if such loan and any loan it replaces were one loan, and as if—

(a) references in subsections (2) to (4) to the application of the proceeds of the loan were references to the application of the proceeds of the original loan, and

(b) any restriction under subsection (3) which applied to any loan which has been replaced applied also as respects the loan which replaces that loan.

(6) Subsection (1) shall not apply to a loan unless it is made in connection with the application of the money and either on the occasion of its application or within what is in the circumstances a reasonable time from the application of the money, and that subsection shall not apply to a loan the proceeds of which are applied for some other purpose before being applied as described in that subsection.

(7) Interest eligible for relief under this section shall be deducted from or set off against the income of the individual for the year of assessment in which the interest is paid and tax shall be discharged or repaid accordingly, and such interest shall not be eligible for relief under any provision of the Income Tax Acts apart from this section.