

Limited partnerships. FA86 s46(1) to (3) and (6), FA92 s23; FA94 s29 1013.—(1) In this section—

“the aggregate amount”, in relation to a trade, means—

(a) in the case of an individual, the aggregate of amounts given or allowed to the individual at any time under any of the specified provisions—

(i) in respect of a loss sustained by him or her in the trade, or of interest paid by him or her by reason of his or her participation in the trade, in any relevant year of assessment, or

(ii) as an allowance to be made to him or her for any relevant year of assessment either in taxing the trade or by means of discharge or repayment of tax to which he or she is entitled by reason of his or her participation in the trade,

and

(b) in the case of a company, the aggregate of amounts given or allowed to the company (in this section referred to as “the partner company”) or to another company at any time under any of the specified provisions—

(i) in respect of a loss incurred by the partner company in the trade, or of charges paid by it or another company by reason of its participation in the trade, in any relevant accounting period, or

(ii) as an allowance to be made to the partner company for any relevant accounting period either in taxing the trade or by means of discharge or repayment of tax to which it is entitled by reason of its participation in the trade;

“limited partner”, in relation to a trade, means—

(a) a person carrying on the trade as a limited partner in a limited partnership registered under the Limited Partnerships Act, 1907 ,

(b) a person carrying on the trade as a general partner in a partnership who is not entitled to take part in the management of the trade but is entitled to have the person's liabilities, or those liabilities beyond a certain limit, for debts or obligations incurred for the purposes of the trade, discharged or reimbursed by some other person, or

(c) a person who carries on the trade jointly with others and, under the law of any territory outside the State, is not entitled to take part in the management of the trade and is not liable beyond a certain limit for debts or obligations incurred for the purposes of the trade;

“relevant accounting period” means an accounting period of the partner company which ends on or after the specified date and at any time during which it carried on the trade as a limited partner;

“the relevant time” means—

(a) in the case of an individual, the end of the relevant year of assessment in which the loss is sustained or the interest is paid, or for which the allowance is to be made (except that where the individual ceased to carry on the trade during that year of assessment it is the time when he or she so ceased), and

(b) in the case of a partner company, the end of the relevant accounting period in which the loss is incurred or the charges are paid, or for which the allowance is to be made (except that where the partner company ceases to carry on the trade during that accounting period it is the time when the partner company so ceased);

“relevant year of assessment” means a year of assessment which ends after the specified date and at any time during which the individual carried on the trade as a limited partner;

“the specified date” means the 22nd day of May, 1985;

“the specified provisions” means—

(a) in the case of an individual, sections 245 to 255, 305 and 381, and

(b) in the case of a company, sections 243, 308 (4) and 396 (2) and subsections (1), (2) and (6) of section 420.

(2) (a) Where, in the case of an individual who is a limited partner in relation to a trade, an amount may apart from this section be given or allowed under any of the specified provisions—

(i) in respect of a loss sustained by the individual in the trade, or of interest paid by him or her by reason of his or her participation in the trade, in a relevant year of assessment, or

(ii) as an allowance to be made to the individual for a relevant year of assessment either in taxing the trade or by means of discharge or repayment of tax to which he or she is entitled by reason of his or her participation in the trade,

such an amount may be given or allowed—

(I) as respects a contribution by a limited partner to the trade of the limited partnership made before the 24th day of April, 1992, otherwise than against income consisting of profits or gains arising from the trade, or

(II) as respects such a contribution made on or after the 24th day of April, 1992, only against income consisting of profits or gains arising from the trade,

and only to the extent that the amount given or allowed or, as the case may be, the aggregate amount in relation to that trade does not exceed the amount of his or her contribution to the trade at the relevant time.

(b) Where, in the case of a partner company which is a limited partner in relation to a trade, an amount may apart from this section be given or allowed under any of the specified provisions—

(i) in respect of a loss sustained by the partner company in the trade, or of charges paid by the partner company or another company by reason of its participation in the trade, in a relevant accounting period, or

(ii) as an allowance to be made to the partner company for a relevant accounting period either in taxing the trade or by means of discharge or repayment of tax to which it is entitled by reason of its participation in the trade,

such an amount may be given or allowed to the partner company—

(I) as respects a contribution by a limited partner to the trade of the limited partnership made before the 24th day of April, 1992, otherwise than against profits or gains arising from the trade, or to another company, or

(II) as respects such a contribution made on or after the 24th day of April, 1992, only against profits or gains arising from the trade,

and only to the extent that the amount given or allowed or, as the case may be, the aggregate amount in relation to that trade does not exceed the partner company's contribution to the trade at the relevant time.

(3) (a) A person's contribution to a trade at any time shall be the aggregate of—

(i) the amount which the person has contributed to the trade as capital and has not subsequently, either directly or indirectly, drawn out or received back from the partnership or from a person connected with the partnership (other than anything, in relation to expenditure which the person has incurred on behalf of the partnership trade or in providing facilities for the partnership trade, which the person is or may be entitled so to draw out or receive back at any time when the person carries on the trade as a limited partner or which the person is or may be entitled to require another person to reimburse the person), and

(ii) the amount of any profits or gains of the trade to which the person is entitled but which the person has not received in money or money's worth.

(b) A person shall for the purposes of paragraph (a) be treated as having received back an amount contributed by the person to the partnership if—

(i) the person received consideration of that amount or value for the sale of the person's interest, or any part of the person's interest, in the partnership,

(ii) the partnership or any person connected with the partnership repays that amount of a loan or an advance from the person, or

(iii) the person receives that amount or value for assigning any debt due to the person from the

partnership or from any person connected with the partnership.

(4) (a) This subsection shall apply, in relation to an amount given or allowed under any of the specified provisions, as respects a contribution by a partner to the trade of the partnership made on or after the 11th day of April, 1994.

(b) For the purposes of this section, where in connection with the making of a contribution to a partnership trade by a general partner in the partnership—

(i) there exists any agreement, arrangement, scheme or understanding under which the partner is required to cease to be a partner in the partnership at any time before the partner is entitled to receive back from the partnership the full amount of the partner's contribution to the trade, or

(ii) by virtue of any agreement, arrangement, scheme or understanding—

(I) any asset owned by the partner is exempt from execution on goods or from a process or mode of enforcement of a debt of the partner or the partnership, or

(II) any other limit or restriction is placed on the creditor's entitlement to recover any such debt from the partner,

the partner shall be treated as a person who is not entitled to take part in the management of the trade but is entitled to have the person's liabilities, or the person's liabilities beyond a certain limit, for debts or obligations incurred for the purposes of the trade, discharged or reimbursed by some other person.

(c) In determining whether an amount is given or allowed under any of the specified provisions as respects a contribution to a trade on or after the 11th day of April, 1994, any amount which would not otherwise have been given or allowed by virtue of this section but for a contribution to a trade on or after that date and on the basis that paragraph (a) had not been enacted shall be treated as given or allowed as respects such a contribution.

(5) (a) In determining whether an amount is given or allowed under any of the specified provisions as respects a contribution to a trade on or after the 24th day of April, 1992, any amount which would not otherwise have been given or allowed by virtue of this section but for a contribution to a trade on or after that date and on the basis that paragraphs (a) (II) and (b) (II) of subsection (2) had not been enacted shall be treated as given or allowed as respects such a contribution.

(b) Notwithstanding paragraph (a) and paragraphs (a) (II) and (b) (II) of subsection (2), this section shall apply in so far as the trade of a limited partnership consists of the management and letting of holiday cottages within the meaning of section 268, where—

(i) a written contract for the construction of the holiday cottages was signed and construction work had commenced before the 24th day of April, 1992, and

(ii) the construction work is completed before the 6th day of April, 1993,

as if references to on or after the 24th day of April, 1992, were references to on or after the 1st day of September, 1992.