Tax Avoidance Schemes: Liability Of Professional Advisers

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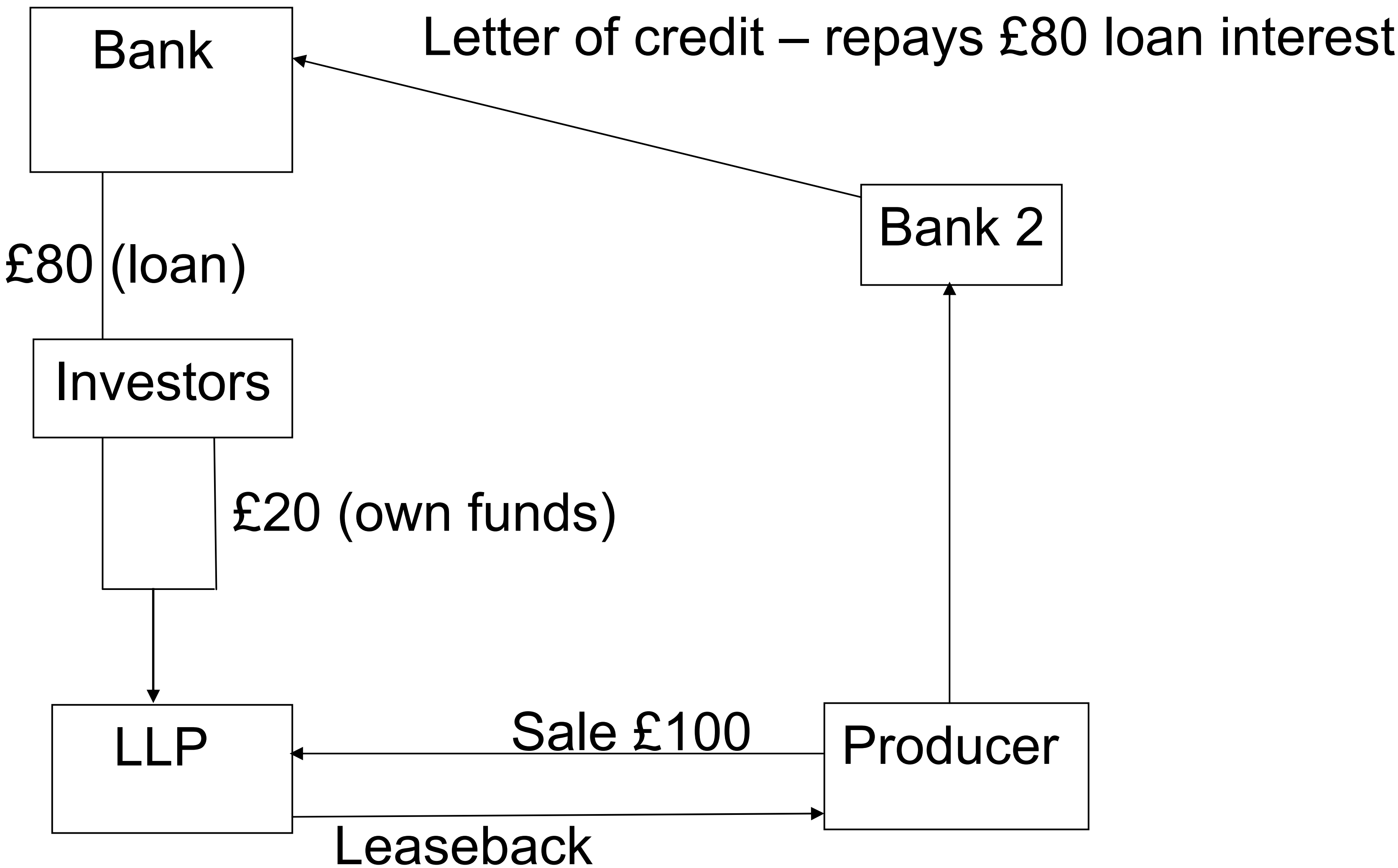
- Background to tax relief schemes
- Restriction of tax relief
- Impact on professionals
- Issues for insurers

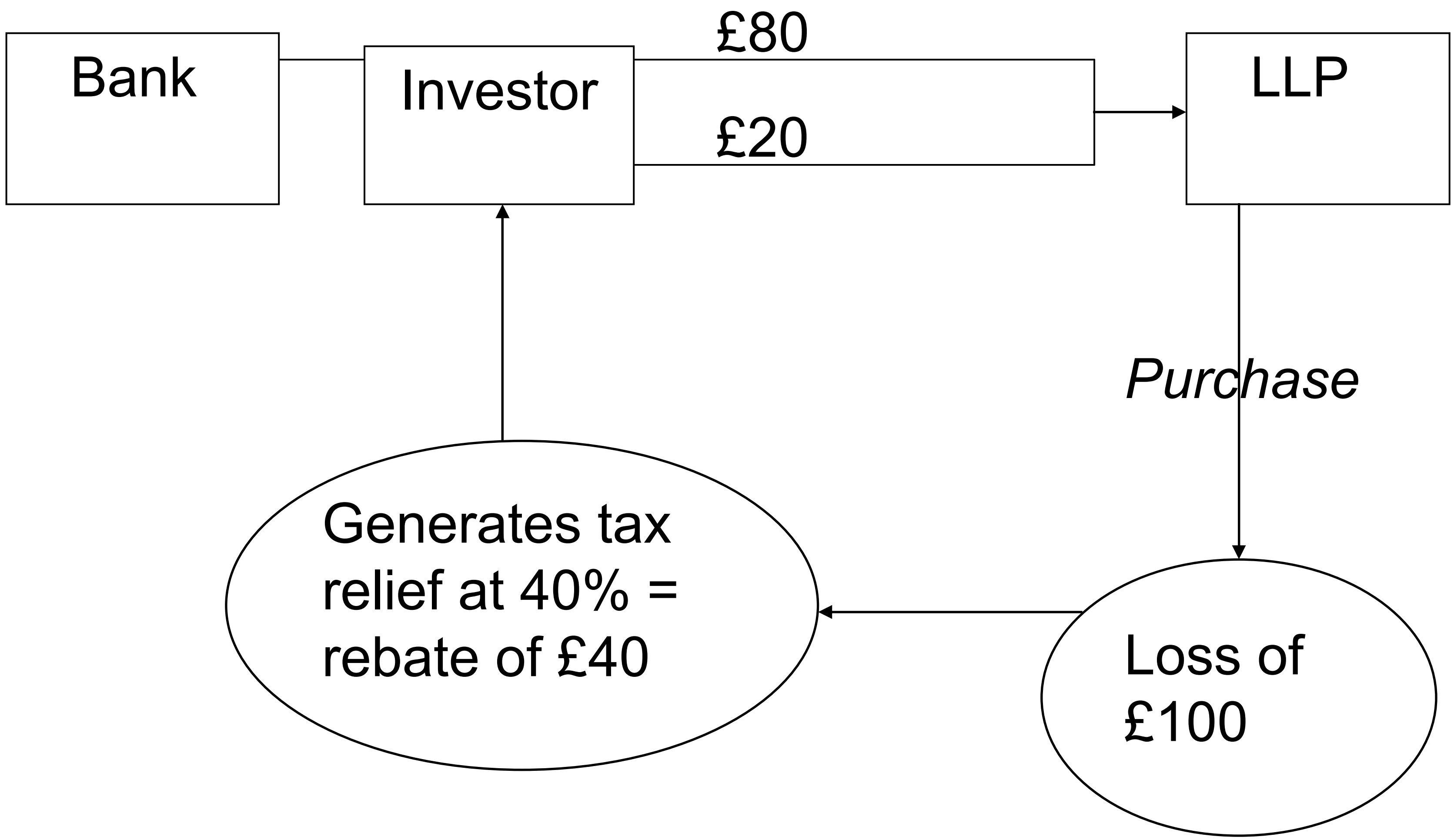
- Why were the reliefs introduced?
- What were the tax relief schemes?
- Why were the reliefs restricted?

- British films
  (s.48 Finance (No. 2) Act 1998)

- Technology start-ups
  (s.45 Capital Allowances Act 2001)

- Research & development
  (s.437 Capital Allowances Act 2001)


Bank
Letter of credit – repays £80 loan interest
Bank 2
£80 (loan)
Investors
£20 (own funds)
LLP
Sale £100
Producer
Leaseback


Bank
Investor
£80
£20
LLP
Purchase
Generates tax relief at 40% = rebate of £40
Loss of £100

Anti-avoidance

- Circular finance
- Failure to trade
- Failure to acquire asset
- Breach of anti-avoidance provisions

Tower MCashback

- Circular finance: a significant part of the claimed expenditure was "*returned to its source immediately … [and] did not go to MCashback as payment for the rights in software, even temporarily*"
- Tax relief allowed against investors' cash contributions only (40% of 25%, not 40% of 100%)
- Each case dependent on its own facts

Tax avoidance schemes

- Who are the targets for claims?
- Why are they exposed?
- Insurance issues

Targets

- Scheme promoters
- Film production
- Technology developers
- Technology vendors
- Technology valuers
- Technology exploiters

Targets – professional advisers

- Barristers
- Solicitors
- Accountants
- IFAs

Why are they targets?

- Bank account
- Commercial viability
- Backdating/legislative change
- Advice/execution only
- Drafting
- Fraud

Insurance issues

1. Insurance of main defendants
2. Litigation funding
3. Insurance of defendants to contribution proceedings
4. After-the-event insurance

Insurance issues

1. Aggregation

2. Notification

3. Fraud

4. Third Parties (Rights Against Insurers) Act 1930

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