



Income and Corporation Taxes Act 1988

1988 CHAPTER 1

PART X

LOSS RELIEF AND GROUP RELIEF

CHAPTER I

LOSS RELIEF: INCOME TAX

Trade etc. losses

380 Set-off against general income.

[^{F1}(1) Where in any year of assessment any person sustains a loss in any trade, profession, vocation or employment carried on by him either solely or in partnership, he may, by notice given within twelve months from the 31st January next following that year, make a claim for relief from income tax on—

- (a) so much of his income for that year as is equal to the amount of the loss or, where it is less than that amount, the whole of that income; or
- (b) so much of his income for the last preceding year as is equal to that amount or, where it is less than that amount, the whole of that income;

but relief shall not be given for the loss or the same part of the loss both under paragraph (a) and under paragraph (b) above.

(2) Any relief claimed under paragraph (a) of subsection (1) above in respect of any income shall be given in priority to any relief claimed in respect of that income under paragraph (b) of that subsection.]

(3) ^{F2}

^{F3}(4) ^{M1}This section applies in relation to losses sustained in the occupation of woodlands in respect of which a person has elected under [^{F4}paragraph 4 of Schedule 6 to the Finance

Status: Point in time view as at 28/09/2004.

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Act 1988] to be charged to income tax under Schedule D as it applies in relation to losses sustained in a trade.

Textual Amendments

- F1** S. 380(1)(2) substituted (with effect in accordance with s. 218 of the amending Act) by Finance Act 1994 (c. 9), s. 209(1) (with Sch. 20)
- F2** S. 380(3) repealed (with effect in accordance with s. 215(4)(5) of the repealing Act) by Finance Act 1994 (c. 9), s. 216(3)(b), Sch. 26 Pt. 5(24), Note 4(a) (as s. 215(5) of that Act is modified (1.5.1995) by 1995 c. 4, s. 125(1)) (with Sch. 20)
- F3** See 1988(F) s.148 and Sch. 14 Part V regarding repeal of s.380(4) from 6 April 1993.
- F4** 1988(F) Sch.6 para.8 from 15 March 1988. Previously “section 54”.

Modifications etc. (not altering text)

- C1** S. 380 amended (27.7.1993 with effect for the year 1992-93 and subsequent years of assessment) by 1993 c. 34, ss. 171 (3), 184(3)
- C2** S. 380(1) modified (1991-92) by The Lloyd's Underwriters (Tax) (1991-92) Regulations 1994 (S.I. 1994/728), regs. 1, 9, Sch. 2
- C3** S. 380(1) modified (3.5.1994) by Finance Act 1994 (c. 9), Sch. 20 para. 8
- C4** S. 380(1) modified (1992-93, 1993-94 and 1994-5) by The Lloyd's Underwriters (Tax) (1992-93 to 1996-97) Regulations 1995 (S.I. 1995/352), regs. 1, 14, 15, Sch.
- C5** See—1990(C) s.142—restriction of set off of first-year allowances.

Marginal Citations

- M1** Source—1970 s.168(8)

381 Further relief for individuals for losses in early years of trade.

- (1) ^{M2}Where an individual carrying on a trade sustains a loss in the trade in—
- (a) the year of assessment in which it is first carried on by him; or
 - (b) any of the next three years of assessment;
- he may, by notice given [^{F5}on or before the first anniversary of the 31st January next following] the year of assessment in which the loss is sustained, make a claim for relief under this section.
- (2) ^{M3}Subject to section 492 and this section, relief shall be given under subsection (1) above from income tax on [^{F6}so much of the claimant's income as is equal to the amount of the loss or, where it is less than that amount, the whole of that income], being income for the three years of assessment last preceding that in which the loss is sustained, taking income for an earlier year before income for a later year.
- (3) ^{M4}Relief shall not be given for the same loss or the same portion of a loss both under subsection (1) above and under any other provision of the Income Tax Acts.
- (4) ^{M5}Relief shall not be given under subsection (1) above in respect of a loss sustained in any period unless ^{F7}... the trade was carried on throughout that period on a commercial basis and in such a way that profits in the trade (or, where the carrying on of the trade forms part of a larger undertaking, in the undertaking as a whole) could reasonably be expected to be realised in that period or within a reasonable time thereafter.

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- (5) Relief shall not be given under subsection (1) above in respect of a loss sustained by an individual in a trade if—
- (a) at the time when it is first carried on by him he is married to and living with another individual who has previously carried on the trade; and
 - (b) the loss is sustained in a year of assessment later than the third year of assessment after that in which the trade was first carried on by the other individual.
- (6) ^{F8}.....
- (7) ^{M6}This section applies, with the necessary modifications, in relation to a profession or vocation as it applies in relation to a trade.

Textual Amendments

- F5** Words in s. 381(1) substituted (with effect in accordance with s. 135(2) of the amending Act) by Finance Act 1996 (c. 8), **Sch. 21 para. 10**
- F6** Words in s. 381(2) substituted (with effect in accordance with s. 218 of the amending Act) by Finance Act 1994 (c. 9), s. 209(2) (with Sch. 20)
- F7** Words in s. 381(4) repealed (with effect in accordance with s. 134(2) of the repealing Act) by Finance Act 1996 (c. 8), Sch. 20 para. 24, **Sch. 41 Pt. 5(10)**, Note
- F8** S. 381(6) repealed (with effect in accordance with s. 215(4)(5) of the repealing Act) by Finance Act 1994 (c. 9), s. 216(3)(c), **Sch. 26 Pt. 5(24)**, Note 4(a) (as s. 215(5) of that Act is modified (1.5.1995) by 1995 c. 4, s. 125(1)) (with Sch. 20)

Modifications etc. (not altering text)

- C6** S. 381(1) modified for the year of assessment 1988-89 by S.I. 1991/851, reg. 9, **Sch.2**.
S. 381(1) modified (for the year of assessment 1989-90 only) (28.3.1992) by S.I. 1992/511, reg. 9, **Sch.2**.
- C7** S. 381(1) applied with modification (23.3.1993) by S.I. 1993/415, reg. 9, **Sch.2**
- C8** S. 381(1) modified (1991-92) by The Lloyd's Underwriters (Tax) (1991-92) Regulations 1994 (S.I. 1994/728), regs. 1, 9, **Sch. 2**
- C9** S. 381(1) modified (1992-93, 1993-94 and 1994-5) by The Lloyd's Underwriters (Tax) (1992-93 to 1996-97) Regulations 1995 (S.I. 1995/352), regs. 1, 14, 15, **Sch.**
- C10** See S.I. 1987 No.530 (in Part III Vol.5) regn. 15—*non-resident entertainers and sportsmen*.
- C11** See 1990(C) s.142—*restriction of set-off of first-year allowances*.

Marginal Citations

- M2** Source—1978 s.30(1)
- M3** Source—1978 s.30(2)
- M4** Source—1978 s.30(3)
- M5** Source—1978 s.30(4)-(6)
- M6** Source—1978 s.30(10)

382 Provisions supplementary to sections 380 and 381.

- (1) ^{M7}A claim for relief under section 380 or 381 may require that the relief be given only by reference to the income of the person sustaining the loss, without extending to the income of that person's wife or husband.
- (2) ^{M8}Subject to any requirement under subsection (1) above, relief under section 380 or 381 shall be given in respect of a loss sustained by any person by treating the loss as

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reducing first his income of the corresponding class, then his other income, then the income of the corresponding class of that person's wife or husband, then the other income of the wife or husband^{F9}.

For the purposes of this subsection “income of the corresponding class” means earned or unearned income according as income arising during the same period as the loss to the person sustaining it from profits or gains of the same trade, profession, vocation or employment would have been that person's earned or unearned income.

[^{F10}(3) Subject to subsection (4) below, for the purposes of sections 380 and 381, the amount of a loss sustained in a trade, profession or vocation shall be computed in like manner and in respect of the same period as the [^{F11}profits arising] from the trade, profession or vocation are computed under the provisions of the Income Tax Acts applicable to Case I or II of Schedule D.

(4) An amount of a loss which, apart from this subsection, would fall to be included in the computations for two successive years of assessment shall not be included in the computation for the second of those years.]

Textual Amendments

F9 Repealed by 1988(F) s.148 and Sch. 14 Part VIII for 1990-91 and subsequent years.

F10 S. 382(3)(4) substituted (with effect in accordance with ss. 209(7), 218 of the amending Act) by Finance Act 1994 (c. 9), s. 209(3) (with Sch. 20)

F11 Words in s. 382(3) substituted (31.7.1998) by Finance Act 1998 (c. 36), s. 46(3), Sch. 7 para. 1

Marginal Citations

M7 Source—1970 s.168(3); 1971 s.16(2)(a); 1978 s.30(7)(a)

M8 Source—1970 s.168(4); 1978 s.30(7)(a)

383 Extension of right of set-off to capital allowances.

^{F12}

Textual Amendments

F12 S. 383 repealed (with effect in accordance with ss. 211(2), 218(1)(b) of the repealing Act) by Finance Act 1994 (c. 9), s. 214(1)(b), Sch. 26 Pt. 5(24), Note 5

384 Restrictions on right of set-off.

(1) ^{M9}Subject to subsection (2) below, a loss ^{F13} . . . shall not be available for relief under section 380 unless ^{F14} . . . , for the year of assessment in which the loss is claimed to have been sustained, the trade was being carried on on a commercial basis and with a view to the realisation of profits in the trade or, where the carrying on of the trade formed part of a larger undertaking, in the undertaking as a whole.

(2) Subsection (1) above shall not apply—

- (a) to a loss made ^{F15} . . . by any person in the exercise of functions conferred by or under any enactment (including an enactment contained in a local or private Act); ^{F16} . . .

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- (b) ^{F16}
- (3) ^{M10} Where during a year of assessment there is a change in the manner in which a trade is being carried on, it shall be treated for the purposes of this section as having been carried on throughout the year in the way in which it was being carried on by the end of the year.
- (4) Subject to subsection (5) below, where a trade is (or falls to be treated as being) carried on for a part only of a year of assessment by reason of its being (or falling to be treated as being) set up and commenced, or discontinued, or both, in that year, subsections (1) to (3) above shall have effect in relation to the trade as regards that part of that year as if any reference to the manner of carrying on the trade for or by the end of that year were a reference to the manner of carrying it on for or by the end of that part of that year.
- (5) ^{F17}
- (6) [^{F18M11} There shall be disregarded for the purposes of sections 380 and 381 so much of any loss as derives from any allowances] made to an individual [^{F19} under Part 2 of the Capital Allowances Act in respect of expenditure incurred on the provision of plant or machinery] for leasing in the course of a trade unless—
- (a) the trade is carried on by him (alone or in partnership) for a continuous period of at least six months in, or beginning or ending in, [^{F20} the year of assessment in which the loss was sustained]; and
- (b) he devotes substantially the whole of his time to carrying it on (alone or in partnership) throughout that year or if it is set up or permanently discontinued (or both) in that year, for a continuous period of at least six months beginning or ending in that year.
- (7) ^{M12} Subsection (6) above shall apply also to expenditure incurred by an individual on the provision for the purposes of a trade carried on by him (alone or in partnership) of an asset which is not to be leased if payments in the nature of royalties or licence fees are to accrue from rights granted by him in connection with that asset.
- (8) ^{M13} Where relief has been given in a case to which subsection (6) above applies it shall be withdrawn by the making of an assessment under Case VI of Schedule D.
- [^{F21} (9) Where at any time a trade is carried on so as to afford a reasonable expectation of profit, it shall be treated for the purposes of subsection (1) above as being carried on at that time with a view to the realisation of profits.]
- (10) Subsections (1) to (5) and (9) above—
- (a) apply to professions and vocations as they apply to trades, with references to a commercial basis construed accordingly; and
- (b) have effect without prejudice to section 397;
- ^{F22}
- [^{F23} (11) Expressions used in subsections (6) to (8) and in Part 2 of the Capital Allowances Act have same meaning in those subsections as in that Part; and those subsections are without prejudice to section 384A.]

Textual Amendments

F13 Words in s. 384(1) repealed (with effect in accordance with ss. 211(2), 218(1)(b) of the repealing Act) by Finance Act 1994 (c. 9), s. 214(1)(c), Sch. 26 Pt. 5(24), Note 5

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- F14** Words in s. 384(1) repealed (with effect in accordance with s. 134(2) of the repealing Act) by Finance Act 1996 (c. 8), Sch. 20 para. 25(1), Sch. 41 Pt. 5(10), Note
- F15** Words in s. 384(2)(a) repealed (with effect in accordance with ss. 211(2), 218(1)(b) of the repealing Act) by Finance Act 1994 (c. 9), s. 214(1)(c), **Sch. 26 Pt. 5(24)**, Note 5
- F16** S. 384(2)(b) and preceding word repealed (with effect in accordance with ss. 211(2), 218(1)(b) of the repealing Act) by Finance Act 1994 (c. 9), s. 214(1)(c), **Sch. 26 Pt. 5(24)**, Note 5
- F17** S. 384(5) repealed (with effect in accordance with s. 215(4)(5) of the repealing Act) by Finance Act 1994 (c. 9), s. 216(3)(d), **Sch. 26 Pt. 5(24)**, Note 4(b) (as s. 215(5) of that Act is modified (1.5.1995) by 1995 c. 4, s. 125(1)) (with Sch. 20)
- F18** Words in s. 384(6) substituted (with effect in accordance with ss. 211(2), 218 of the amending Act) by Finance Act 1994 (c. 9), s. 214(2)(a)
- F19** Words in s. 384(6) substituted (with effect in accordance with s. 579(1) of the amending Act) by Capital Allowances Act 2001 (c. 2), **Sch. 2 para. 29(1)** (with Sch. 3)
- F20** Words in s. 384(6)(a) substituted (with effect in accordance with ss. 211(2), 218 of the amending Act) by Finance Act 1994 (c. 9), s. 214(2)(b)
- F21** S. 384(9) substituted (with effect in accordance with s. 134(2) of the amending Act) by Finance Act 1996 (c. 8), **Sch. 20 para. 25(2)**
- F22** Words in s. 384(10) repealed (with effect in accordance with s. 579(1) of the repealing Act) by Capital Allowances Act 2001 (c. 2), Sch. 2 para. 29(2), **Sch. 4** (with Sch. 3)
- F23** S. 384(11) inserted (with effect in accordance with s. 579(1) of the amending Act) by Capital Allowances Act 2001 (c. 2), **Sch. 2 para. 29(2)** (with Sch. 3)

Marginal Citations

- M9** Source—1970 s.170(1)
- M10** Source—1970 s.170(2)-(4)
- M11** Source—1980 s.70(1), (5)
- M12** Source—1980 s.70(2), (5)
- M13** Source—1980 s.70(4)

[^{F24}384A Restriction of set-off of allowances against general income

- (1) Relief shall not be given to an individual under sections 380 and 381 by reference to a first-year allowance under Part 2 of the Capital Allowances Act (plant and machinery allowances) in the circumstances specified in subsection (2) or (4) below.
- (2) The circumstances are that the allowance is in respect of expenditure incurred on the provision of plant or machinery for leasing in the course of a qualifying activity and—
 - (a) at the time when the expenditure was incurred, the qualifying activity was carried on by the individual in question in partnership with a company (with or without other partners), or
 - (b) a scheme has been effected or arrangements have been made (whether before or after that time) with a view to the qualifying activity being so carried on by that individual.
- (3) For the purposes of subsection (2) above letting a ship on charter shall be regarded as leasing it if, apart from this subsection, it would not be so regarded.
- (4) The circumstances are that the allowance is made in connection with—
 - (a) a qualifying activity which at the time when the expenditure was incurred was carried on by the individual in partnership or which has subsequently been carried on by him in partnership or transferred to a person who was connected with him, or

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- (b) an asset which after that time has been transferred by the individual to a person who was connected with him or, at a price lower than its market value, to any other person,
and the condition in subsection (5) below is met.
- (5) The condition is that a scheme has been effected or arrangements have been made (whether before or after the time referred to in subsection (4) above) such that the sole or main benefit that might be expected to accrue to the individual from the transaction under which the expenditure was incurred was the obtaining of a reduction in tax liability by means of relief under sections 380 and 381.
- (6) Where relief has been given in circumstances in which subsection (1) applies it shall be withdrawn by the making of an assessment under Case VI of Schedule D.
- (7) Section 839 (how to tell whether persons are connected) applies for the purposes of subsection (4) above.
- (8) Expressions used in this section and in Part 2 of the Capital Allowances Act have the same meaning as in that Part.]

Textual Amendments

F24 S. 384A inserted (with effect in accordance with s. 579(1) of the amending Act) by [Capital Allowances Act 2001 \(c. 2\)](#), [Sch. 2 para. 30](#) (with [Sch. 3](#))

385 Carry-forward against subsequent profits.

- [^{F25}(1) Where a person has, in any trade, profession or vocation carried on by him either alone or in partnership, sustained a loss (to be computed as mentioned in subsections (3) and (4) of section 382) in respect of which relief has not been wholly given either under section 380 or any provision of the Income Tax Acts—
 - (a) he may make a claim requiring that any part of the loss for which relief has not been so given shall be set off for the purposes of income tax against the income of the trade, profession or vocation for subsequent years of assessment; and
 - (b) where he makes such a claim, the income from the trade, profession or vocation in any subsequent year of assessment shall be treated as reduced by that part of the loss, or by so much of that part as cannot, on that claim, be relieved against such income of an earlier year of assessment.]
- (2) ^{F26}
- (3) ^{F27}
- (4) Where in any year of assessment relief cannot be given, or cannot be wholly given, in respect of a loss carried forward under this section because the amount of the [^{F28}profits] of the trade assessed under Case I of Schedule D for that year is insufficient, any interest or dividends being interest or dividends—
 - (a) on investments arising in that year, and
 - (b) which would fall to be taken into account as trading receipts in computing the [^{F28}profits] of the trade for the purposes of assessment under that Case but for the fact that they have been subjected to tax under other provisions of the Income Tax Acts,

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shall be treated for the purposes of the application of this section as if they were [^{F28}profits] on which the person carrying on the trade was assessed under that Case in respect of that trade for that year of assessment, and relief shall be given accordingly by repayment or otherwise.

(5) ^{F29}

^{F30}(6) Where a loss is sustained by a person in the occupation of woodlands, and that person, if he had made a profit, would by reason of his election under [^{F31}paragraph 4 of Schedule 6 to the Finance Act 1988] have been chargeable for the following year to income tax under Schedule D computed on the amount of that profit, this section shall apply so as to give relief in respect of that loss in the same manner, and to the same extent, as if it were a loss sustained in a trade.

(7) In so far as relief in respect of any loss has been given to any person under this section, that person shall not be entitled to claim relief in respect of that loss under any other provision of the Income Tax Acts.

(8) ^{F32}

Textual Amendments

- F25** S. 385(1) substituted (with effect in accordance with ss. 209(7), 218 of the amending Act) by [Finance Act 1994 \(c. 9\), s. 209\(4\)](#) (with [Sch. 20](#))
- F26** S. 385(2) repealed (with effect in accordance with s. 215(4)(5) of the repealing Act) by [Finance Act 1994 \(c. 9\), s. 216\(3\)\(e\), Sch. 26 Pt. 5\(24\)](#), Note 4(c) (as s. 215(5) of that Act is modified (1.5.1995) by 1995 c. 4, [s. 125\(1\)](#)) (with [Sch. 20](#))
- F27** S. 385(3) repealed (with effect in accordance with ss. 209(7), 218 of the repealing Act) by [Finance Act 1994 \(c. 9\), s. 209\(5\), Sch. 26 Pt. 5\(24\)](#), Note 6
- F28** Words in s. 385(4) substituted (31.7.1998) by [Finance Act 1998 \(c. 36\), s. 46\(3\), Sch. 7 para. 1](#)
- F29** S. 385(5) repealed (with effect in accordance with s. 215(4)(5) of the repealing Act) by [Finance Act 1994 \(c. 9\), s. 216\(3\)\(e\), Sch. 26 Pt. 5\(24\)](#), Note 4(c) (as s. 215(5) of that Act is modified (1.5.1995) by 1995 c. 4, [s. 125\(1\)](#)) (with [Sch. 20](#))
- F30** See 1988(F) Sch.14 Part V—*repeal of subs. (6) from 6 April 1993.*
- F31** 1988(F) Sch.6 para.6(8)*from 15 March 1988. Previously* “section 54”.
- F32** S. 385(8) repealed (with effect in accordance with ss. 209(7), 218 of the repealing Act) by [Finance Act 1994 \(c. 9\), s. 209\(5\), Sch. 26 Pt. 5\(24\)](#), Note 6

Modifications etc. (not altering text)

- C12** S. 385 modified (with effect in accordance with s. 56(9) of the amending Act) by [Finance Act 1998 \(c. 36\), s. 56\(4\)](#)
- C13** S. 385 modified by [Finance Act 1993 \(c. 34\), Sch. 20A paras. 6-8](#) (as inserted (22.7.2004) by [Finance Act 2004 \(c. 12\), Sch. 25 para. 3](#))

386 Carry-forward where business transferred to a company.

(1) ^{M14}Where—

- (a) a business carried on by any individual, or any individuals in partnership, has been transferred to a company in consideration solely or mainly of the allotment of shares in the company to that individual or those individuals; and

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- (b) in the case of any individual to whom, or to whose nominee or nominees, shares have been so allotted, his total income for any year of assessment throughout which he is the beneficial owner of the shares, and throughout which the company carries on the business, includes any income derived by him from the company, whether by way of dividends on those shares or otherwise;

then, subject to subsection (2) below, section 385 (except subsection (5)) shall apply as if the income so derived were [^{F33}profits] on which that individual was assessed under Schedule D in respect of that business for that year.

- (2) Where under section 385 as applied by subsection (1) above a loss falls to be deducted from or set off against any income for any year of assessment, the deduction or set-off shall be made in the first place against that part, if any, of the income in respect of which the individual has been, or is liable to be, assessed to tax for that year.
- (3) This section, in its application to the year of assessment in which a business is transferred, shall have effect as if, for the reference in subsection (1)(b) to the year of assessment throughout which the individual is the beneficial owner of the shares and the business is carried on by the company, there were substituted a reference to the period from the date of the transfer to the following 5th April.
- (4) ^{F34}

Textual Amendments

F33 Words in s. 386(1) substituted (31.7.1998) by [Finance Act 1998 \(c. 36\), s. 46\(3\), Sch. 7 para 1](#)

F34 S. 386(4) repealed (with effect in accordance with s. 215(4)(5) of the repealing Act) by [Finance Act 1994 \(c. 9\), s. 216\(3\)\(f\), Sch. 26 Pt. 5\(24\)](#), Note 4(a) (as s. 215(5) of that Act is modified (1.5.1995) by [1995 c. 4, s. 125\(1\)](#)) (with Sch. 20)

Marginal Citations

M14 Source—1970 s.172

387 Carry-forward as losses of amounts taxed under section 350.

- (1) ^{M15}Subject to the provisions of this section, where under section 350 a person has been assessed to income tax in respect of a payment made wholly and exclusively for the purposes of a trade, profession or vocation, the amount on which tax has been paid under that assessment shall be treated for the purposes of sections 385 and 386 as though it were a loss sustained in that trade, profession or vocation, and relief in respect of the loss shall be allowed accordingly.
- (2) Relief shall not be allowed by virtue of this section in respect of any payment, or part of a payment, which is not ultimately borne by the person assessed, or which is charged to capital.
- (3) This section shall not apply—
- (a) ^{M16}to any payment falling within section 349(2);
 - (b) ^{M17}to any payment falling within section 349 by virtue of section 43(1);
 - (c) ^{F35}
 - (d) to any capital sum paid in respect of any patent rights assessed under section 349(1) by virtue of section 524;

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- (e) to any payment of, or on account of, copyright royalties to which section 536 applies [^{F36}or royalties in respect of a right in a design to which section 537B applies]^{F37} . . .
- (f) ^{F37}

Textual Amendments

- F35** S. 387(3)(c) repealed (with effect in accordance with Sch. 18 Pt. 6(2) Note of the repealing Act) by Finance Act 1997 (c. 16), **Sch. 18 Pt. 6(2)**
- F36** Sch.7 para.36(4)Copyright, Designs and Patents Act 1988 (c.48)from 1August 1989. (Commencement order—S.I. 1989 No.816—not reproduced.)
- F37** S. 387(3)(f) and preceding word repealed (with effect in accordance with Sch. 18 Pt. 6(10) Note 3 of the repealing Act) by Finance Act 1997 (c. 16), **Sch. 18 Pt. 6(10)**; S.I. 1997/991, **art. 2**

Marginal Citations

- M15** Source—1970 s.173(1), (2)
- M16** Source—1970 s.173(3)(aa); 1970(F) Sch.4 9(6)
- M17** Source—1970 s.173(3)(a)-(c)

388 Carry-back of terminal losses.

- (1) ^{M18}Where a trade, profession or vocation is permanently discontinued in the year 1988-89 or any later year, and any person then carrying it on, either alone or in partnership, has sustained therein a loss to which this section applies (“a terminal loss”), that person may, subject to the provisions of this section and of section 389, make a claim requiring that the amount of the terminal loss shall, as far as may be, be deducted from or set off against the amount of [^{F38}profits] on which he has been charged to income tax under Schedule D in respect of the trade, profession or vocation for [^{F39}the year of assessment in which the discontinuance occurs and the three years last preceding it]; and there shall be made all such reductions of assessments or repayments of tax as may be necessary to give effect to the claim.
- (2) Relief shall not be given in respect of the same matter both under this section and under some other provision of the Income Tax Acts.
- (3) ^{M19}Any relief under this section shall be given as far as possible from the assessment for a later rather than an earlier year.
- (4) Where—
- (a) a claim under this section is made in respect of a terminal loss sustained in a trade, and
 - (b) relief cannot be given, or cannot be wholly given, against the [^{F38}profits] of the trade charged to income tax under Schedule D for any year because the amount of those [^{F38}profits] is insufficient,

any relevant interest or dividends arising in that year shall be treated for the purposes of the application of this section as if they were [^{F38}profits] on which the person carrying on the trade was assessed under Case I of Schedule D in respect of that trade for that year of assessment, and relief shall be given accordingly by repayment or otherwise.

For the purposes of this subsection “any relevant interest or dividends” means interest or dividends which would fall to be taken into account as trading receipts in computing the [^{F38}profits] of the trade for the purpose of assessment

Status: Point in time view as at 28/09/2004.

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under Case I of Schedule D but for the fact that they have been subjected to tax under other provisions of the Income Tax Acts.

- (5) The [^{F38}profits] on which a person or partnership has been charged to income tax for any year of assessment shall be treated for the purposes of any relief under this section from the assessment for that year as reduced by the amount of those [^{F38}profits] applied in making any payment from which income tax was deducted, but was not accounted for because the payment was made out of profits or gains brought into charge to income tax; and the like reduction shall be made in the amount of the terminal loss for which relief may be given under this section from the assessments for earlier years unless the payment was one which, if not made out of profits or gains brought into charge to income tax—
- (a) could have been assessed to income tax under section 350, and
 - (b) if so assessed, could have been treated as a loss by virtue of section 387.
- (6) The question whether a person has sustained any and, if so, what terminal loss in a trade, profession or vocation shall be determined for the purposes of this section by taking the amounts (if any) of the following, in so far as they have not otherwise been taken into account so as to reduce or relieve any charge to tax—
- (a) the loss sustained by him in the trade, profession or vocation in the year of assessment in which it is permanently discontinued;
 - (b) ^{F40}
 - (c) the loss sustained by him in the trade, profession or vocation in the part of the preceding year of assessment beginning 12 months before the discontinuance; ^{F40}
 - (d) ^{F40}
- (7) ^{F41} . . . For the purposes of paragraphs (a) and (c) of that subsection the amount of a loss shall, subject to the provisions of this section, be computed in the same way as [^{F38}profits] under the provisions of the Income Tax Acts applicable to Cases I and II of Schedule D.

Textual Amendments

- F38** Words in s. 388(1)(4)(5)(7) substituted (31.7.1998) by [Finance Act 1998 \(c. 36\), s. 46\(3\), Sch. 7 para. 1](#)
- F39** Words in s. 388(1) substituted (with effect in accordance with s. 218 of the amending Act) by [Finance Act 1994 \(c. 9\), s. 209\(6\) \(with Sch. 20\)](#)
- F40** S. 388(6)(b)(d) (and word preceding (d)) repealed (with effect in accordance with ss. 211(2), 218(1)(b) of the repealing Act) by [Finance Act 1994 \(c. 9\), s. 214\(1\)\(d\), Sch. 26 Pt. 5\(24\)](#), Note 5(a) (with Sch. 20)
- F41** Words in s. 388(7) repealed (with effect in accordance with ss. 211(2), 218(1)(b) of the repealing Act) by [Finance Act 1994 \(c. 9\), s. 214\(1\)\(d\), Sch. 26 Pt. 5\(24\)](#), Note 5(a) (with Sch. 20)

Modifications etc. (not altering text)

- C14** S. 388 restricted (9.3.1995 with effect in accordance with reg. 1 of the affecting S.I.) by [The Lloyd's Underwriters \(Tax\) Regulations 1995 \(S.I. 1995/351\), reg. 14\(3\)](#)
- C15** S. 388 modified (1.12.1997 with effect in accordance with reg. 1 of the affecting S.I.) by [The Lloyd's Underwriters \(Scottish Limited Partnerships\) \(Tax\) Regulations 1997 \(S.I. 1997/2681\), reg. 10](#)
- C16** See 1990(C) ss.30-31(*ships*)—*carry forward does not include postponement under 1990(C) ss.30-31.*

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Marginal Citations

M18 Source—1970 s.174(1)

M19 Source—1970 s.174(2)-(6)

389 Supplementary provisions relating to carry-back of terminal losses.

- (1) ^{M20}Sections 387, 458 and 474 shall apply to the computation of losses, or of profit or loss, for any purpose of this section or section 388 as they apply to any such computation for the corresponding purposes of section 385.
- (2) Where on the permanent discontinuance of a trade which consists of or includes the working of a mine, oil well or other source of mineral deposits within the meaning of [^{F42}Part 5 of the Capital Allowances Act], a claim for relief is made both under section 388 above and [^{F43}section 355 of that Act](carry-back of balancing allowances), the balancing allowance in respect of which the claim is made under [^{F44}section 355] shall be left out of account for the purposes of section 388(6), but relief under section 388 shall be given in priority to relief under [^{F44}section 355].
- (3) ^{F45}
- [^{F46}(4) For the purposes of this section and section 388 a trade, profession or vocation shall be treated as discontinued, and a new one as set up and commenced, when it is so treated for the purposes of section 111 or 113.]
- (5) ^{F47}
- (6) ^{F47}
- (7) ^{F47}
- ^{F48}(8) Where a person occupying woodlands has elected to be charged to income tax in respect thereof under Schedule D, this section and section 388 shall apply to a terminal loss sustained by him in the occupation of the woodlands as they apply to a terminal loss sustained in a trade.

Textual Amendments

- F42** Words in s. 389(2) substituted (with effect in accordance with s. 579(1) of the amending Act) by [Capital Allowances Act 2001 \(c. 2\)](#), [Sch. 2 para. 31\(a\)](#) (with Sch. 3)
- F43** Words in s. 389(2) substituted (with effect in accordance with s. 579(1) of the amending Act) by [Capital Allowances Act 2001 \(c. 2\)](#), [Sch. 2 para. 31\(b\)](#) (with Sch. 3)
- F44** Words in s. 389(2) substituted (with effect in accordance with s. 579(1) of the amending Act) by [Capital Allowances Act 2001 \(c. 2\)](#), [Sch. 2 para. 31\(c\)](#) (with Sch. 3)
- F45** S. 389(3) repealed (with effect in accordance with s. 215(4)(5) of the repealing Act) by [Finance Act 1994 \(c. 9\)](#), s. 216(3)(g), [Sch. 26 Pt. 5\(24\)](#), Note 4(d) (as s. 215(5) of that Act is modified (1.5.1995) by 1995 c. 4, [s. 125\(1\)](#)) (with Sch. 20)
- F46** S. 389(4) substituted (with effect in accordance with s. 215(4)(5) of the amending Act) by [Finance Act 1994 \(c. 9\)](#), [s. 216\(4\)](#) (as s. 215(5) of that Act is modified (1.5.1995) by 1995 c. 4, [s. 125\(1\)](#)) (with Sch. 20)
- F47** S. 389(5)-(7) repealed (with effect in accordance with ss. 211(2), 218(1)(b) of the repealing Act) by [Finance Act 1994 \(c. 9\)](#), s. 214(1)(e), [Sch. 26 Pt. 5\(24\)](#), Note 5(c) (with Sch. 20)
- F48** See 1988(F) Sch.14 Part V for repeal of subs. (8) from 6 April 1993.

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Marginal Citations

M20 Source—1970 s.174(7)-(13); 1986 Sch.13 27; 1971 Sch.8 16

390 Treatment of interest as a loss for purposes of carry-forward and carry-back.

^{M21}Where—

- (a) a payment of interest eligible for relief under section 353 is money wholly and exclusively laid out or expended for the purposes of a trade, profession or vocation the profits of which are chargeable to tax under Case I or II of Schedule D, and
- (b) full effect cannot be given to such relief in respect of the payment by reason of a want or deficiency of income of the year of assessment in which the payment is made,

the amount unallowed may be carried forward to succeeding years of assessment as if it were a loss carried forward under section 385, or may be treated for the purposes of sections 388 and 389 as a loss sustained at the date of payment.

Marginal Citations

M21 Source—1970 s.175; 1972 Sch.11 3; 1974 Sch.1 28

391 Losses from trade etc. carried on abroad.

- (1) ^{M22}Subject to the following provisions of this section, sections 380 to 386 and 388 and 389, so far as applicable, shall apply in relation to a loss incurred by any person in the carrying on of a trade, profession or vocation chargeable in accordance with section 65(3) as they apply to a loss incurred in a trade, profession or vocation chargeable to tax under Case I or II of Schedule D.
- (2) ^{M23}Relief shall not be given by virtue of subsection (1) above except on income falling within section 65(2) or (3) [^{F49}of this Act or section 23, 355 or 615 of ITEPA 2003].

Textual Amendments

F49 Words in s. 391(2) substituted (6.4.2003 with effect in accordance with s. 723(1) of the amending Act) by [Income Tax \(Earnings and Pensions\) Act 2003 \(c. 1\)](#), [Sch. 6 para. 53](#) (with [Sch. 7](#))

Marginal Citations

M22 Source—1974 s.23(2)(a); 1978 s.30(7)(b)

M23 Source—1974 s.23(4); 1984 s.30(13)

Status:

Point in time view as at 28/09/2004.

Changes to legislation:

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