



Income and Corporation Taxes Act 1988

1988 CHAPTER 1

PART X

LOSS RELIEF AND GROUP RELIEF

CHAPTER III

LOSS RELIEF: MISCELLANEOUS PROVISIONS

397 Restriction of relief in case of farming and market gardening.

- (1) ^{F1}
- (2) Any loss incurred in any accounting period by a company in carrying on a trade of farming or market gardening shall be excluded from section 393(2) if a loss, computed without regard to capital allowances, was incurred in carrying on that trade in that accounting period, and in each of the chargeable periods wholly or partly comprised in the prior five years.
- (3) [^{F2}This section] shall not restrict relief for any loss or for any capital allowance [^{F3}in any case]—
 - (a) [^{F4}where] the whole of the farming or market gardening activities in the year next following the prior five years are of such a nature, and carried on in such a way, as would have justified a reasonable expectation of the realisation of profits in the future if they had been undertaken by a competent farmer or market gardener, but
 - (b) [^{F4}where], if that farmer or market gardener had undertaken those activities at the beginning of the prior period of loss, [^{F5}that farmer or market gardener] could not reasonably have expected the activities to become profitable until after the end of the year next following the prior period of loss.
- (4) [^{F6}This section] shall not restrict relief where the carrying on of the trade forms part of, and is ancillary to, a larger trading undertaking.

Status: Point in time view as at 21/10/2009. This version of this provision has been superseded.

Changes to legislation: Income and Corporation Taxes Act 1988, Section 397 is up to date with all changes known to be in force on or before 13 August 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

(5) In this section—

^{F7}

^{F8}

[^{F9}“prior five years” means, in relation to a loss incurred in a company's accounting period, the last five years before the beginning of that period;]

“prior period of loss” means the prior five years, except that, if losses were incurred in the trade in successive ^{F10} . . . chargeable periods amounting in all to a period longer than five years (and ending when the prior five years end), it means that longer period, and [^{F11}for this purpose]“losses” means losses computed without regard to capital allowances; and

[^{F12}“farming” and “market gardening” shall be construed in accordance with the definitions in section 832, but as if those definitions were not restricted to activities in the United Kingdom.]

(6) ^{F13}

(7) In ascertaining for the purposes of this section whether a loss was incurred in any part of the prior five years or earlier, the rules applicable to [^{F14}the calculation of the profits of a trade in Part 3 of CTA 2009 (or in Part 2 of ITTOIA 2005)] shall be applied; and in this section “loss computed without regard to capital allowances” means ^{F15} . . . a loss so ascertained, [^{F16} but disregarding—

- (a) any allowance or charge under the Capital Allowances Act (including enactments which under this Act are to be treated as contained in that Act); and
- (b) any provision of that Act requiring allowances and charges to be treated as expenses and receipts of the trade].

(8) [^{F17}This section] shall not restrict relief for any loss or capital allowance if the trade was set up and commenced within the prior five years, and, for the purposes of this subsection [^{F18}a trade shall be treated as discontinued, and a new trade set up in the event of any of the following—]

[^{F19}[^{F20}(a) a company starting or ceasing to be within the charge to corporation tax in respect of a trade;]

(b) [^{F21}a change in the persons carrying on a trade] which involves all of the persons carrying it on before the change permanently ceasing to carry it on][^{F22}; or

(c) a change in the persons carrying on a trade not falling within paragraph (b) if—

[^{F23}(i) immediately before the change, the trade is carried on by persons who include a company and after the change, no company that carried on the trade in partnership immediately before the change continues to carry it on in partnership, or

(ii) immediately before the change, no company carries on the trade in partnership, and immediately after the change, the trade is carried on in partnership by persons who include a company.]]

(9) For the purposes of subsection (8) above a trade shall not be treated as discontinued [^{F24}if the change in the persons carrying on the trade is a cessation to which section 343(1) applies.]

(10) [^{F25}Where at any time there has been a change in the persons carrying on a trade, this section shall, notwithstanding subsection (8) above, apply as if]—

- (a) a husband and his wife were the same person, ^{F26} . . .

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- [^{F27}(ab) two civil partners of each other were the same person,]
(b) a husband or his wife were the same person as any company of which either the husband or the wife has control, or of which the two of them have control; [^{F28}
and
(c) a civil partner of another were the same person as any company of which either of the civil partners has control, or of which the two of them have control;]
and accordingly relief^{F29} . . . may be restricted under this section by reference to losses [^{F30}(computed without regard to capital allowances) some of which are incurred in an accounting period wholly or partly comprised in the prior five years and some of which are incurred in a year of assessment wholly or partly comprised in the prior five years].

In this subsection “control” has the same meaning as in Part XI.

Textual Amendments

- F1** S. 397(1) repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by [Income Tax Act 2007 \(c. 3\), Sch. 1 para. 74\(2\), Sch. 3 Pt. 1](#) (with Sch. 2)
- F2** Words in s. 397(3) substituted (6.4.2007 with effect in accordance with s. 1034(1) of the amending Act) by [Income Tax Act 2007 \(c. 3\), Sch. 1 para. 74\(3\)\(a\)](#) (with Sch. 2)
- F3** Words in s. 397(3) substituted (with effect in accordance with s. 134(2) of the amending Act) by [Finance Act 1996 \(c. 8\), Sch. 20 para. 27\(a\)](#)
- F4** Words in s. 397(3)(a)(b) substituted (with effect in accordance with s. 134(2) of the amending Act) by [Finance Act 1996 \(c. 8\), Sch. 20 para. 27\(b\)](#)
- F5** Words in s. 397(3)(b) substituted (6.4.2007 with effect in accordance with s. 1034(1) of the amending Act) by [Income Tax Act 2007 \(c. 3\), Sch. 1 para. 74\(3\)\(b\)](#) (with Sch. 2)
- F6** Words in s. 397(4) substituted (6.4.2007 with effect in accordance with s. 1034(1) of the amending Act) by [Income Tax Act 2007 \(c. 3\), Sch. 1 para. 74\(4\)](#) (with Sch. 2)
- F7** S. 397(5): definition of “basis year” repealed (with effect in accordance with s. 579(1) of the repealing Act) by [Capital Allowances Act 2001 \(c. 2\), Sch. 2 para 34\(1\)\(a\), Sch. 4](#) (with Sch. 3)
- F8** S. 397(5): definition of “chargeable period” repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by [Income Tax Act 2007 \(c. 3\), Sch. 1 para. 74\(5\)\(a\), Sch. 3 Pt. 1](#) (with Sch. 2)
- F9** S. 397(5): definition of “prior five years” substituted (6.4.2007 with effect in accordance with s. 1034(1) of the amending Act) by [Income Tax Act 2007 \(c. 3\), Sch. 1 para. 74\(5\)\(b\)](#) (with Sch. 2)
- F10** S. 397(5): words in definition of “prior period of loss” repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by [Income Tax Act 2007 \(c. 3\), Sch. 1 para. 74\(5\)\(c\)\(i\), Sch. 3 Pt. 1](#) (with Sch. 2)
- F11** S. 397(5): words in definition of “prior period of loss” substituted (6.4.2007 with effect in accordance with s. 1034(1) of the amending Act) by [Income Tax Act 2007 \(c. 3\), Sch. 1 para. 74\(5\)\(c\)\(ii\)](#) (with Sch. 2)
- F12** S. 397(5): definitions of “farming” and “market gardening” substituted (6.4.2007 with effect in accordance with s. 1034(1) of the amending Act) by [Income Tax Act 2007 \(c. 3\), Sch. 1 para. 74\(5\)\(d\)](#) (with Sch. 2)
- F13** S. 397(6) repealed (with effect in accordance with s. 579(1) of the repealing Act) by [Capital Allowances Act 2001 \(c. 2\), Sch. 2 para. 34\(2\), Sch. 4](#) (with Sch. 3)
- F14** Words in s. 397(7) substituted (1.4.2009 with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\), Sch. 1 para. 113\(2\)](#) (with Sch. 2 Pts. 1, 2)
- F15** Words in s. 397(7) repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by [Income Tax Act 2007 \(c. 3\), Sch. 1 para. 74\(6\)\(c\), Sch. 3 Pt. 1](#) (with Sch. 2)
- F16** Words in s. 397(7) substituted (with effect in accordance with s. 579(1) of the amending Act) by [Capital Allowances Act 2001 \(c. 2\), Sch. 2 para. 34\(3\)](#) (with Sch. 3)

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- F17** Words in s. 397(8) substituted (6.4.2007 with effect in accordance with s. 1034(1) of the amending Act) by **Income Tax Act 2007 (c. 3), Sch. 1 para. 74(7)(a)** (with Sch. 2)
- F18** Words in s. 397(8) inserted (1.4.2009 with effect in accordance with s. 1329(1) of the amending Act) by **Corporation Tax Act 2009 (c. 4), Sch. 1 para. 113(3)(a)** (with Sch. 2 Pts. 1, 2)
- F19** S. 397(8)(a)(b) substituted for words in s. 397(8) (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by **Income Tax (Trading and Other Income) Act 2005 (c. 5), Sch. 1 para. 169(4)** (with Sch. 2)
- F20** S. 397(8)(a) substituted for s. 397(8)(a) and following word (1.4.2009 with effect in accordance with s. 1329(1) of the amending Act) by **Corporation Tax Act 2009 (c. 4), Sch. 1 para. 113(3)(b)** (with Sch. 2 Pts. 1, 2)
- F21** Words in s. 397(8)(b) substituted (1.4.2009 with effect in accordance with s. 1329(1) of the amending Act) by **Corporation Tax Act 2009 (c. 4), Sch. 1 para. 113(3)(c)** (with Sch. 2 Pts. 1, 2)
- F22** S. 397(8)(c) and preceding word inserted (1.4.2009 with effect in accordance with s. 1329(1) of the amending Act) by **Corporation Tax Act 2009 (c. 4), Sch. 1 para. 113(3)(d)** (with Sch. 2 Pts. 1, 2)
- F23** S. 397(8)(c)(i)(ii) substituted (retrospective to 1.4.2009 with effect in accordance with art. 1(2) of the amending S.I.) by **The Corporation Tax Act 2009 (Amendment) Order 2009 (S.I. 2009/2860, art. 3(2))**
- F24** Words in s. 397(9) substituted (1.4.2009 with effect in accordance with s. 1329(1) of the amending Act) by **Corporation Tax Act 2009 (c. 4), Sch. 1 para. 113(4)** (with Sch. 2 Pts. 1, 2)
- F25** Words in s. 397(10) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by **Income Tax (Trading and Other Income) Act 2005 (c. 5), Sch. 1 para. 169(5)** (with Sch. 2)
- F26** Word at the end of s. 397(10)(a) omitted (5.12.2005) by virtue of **The Tax and Civil Partnership Regulations 2005 (S.I. 2005/3229), regs. 1(1), 71(2)(a)**
- F27** S. 397(10)(ab) inserted (5.12.2005) by **The Tax and Civil Partnership Regulations 2005 (S.I. 2005/3229), regs. 1(1), 71(2)(a)**
- F28** S. 397(10)(c) and preceding word inserted (5.12.2005) by **The Tax and Civil Partnership Regulations 2005 (S.I. 2005/3229), regs. 1(1), 71(2)(b)**
- F29** Words in s. 397(10) repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by **Income Tax Act 2007 (c. 3), Sch. 1 para. 74(8)(a), Sch. 3 Pt. 1** (with Sch. 2)
- F30** Words in s. 397(10) substituted (6.4.2007 with effect in accordance with s. 1034(1) of the amending Act) by **Income Tax Act 2007 (c. 3), Sch. 1 para. 74(8)(b)** (with Sch. 2)

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