



# Income and Corporation Taxes Act 1988

## 1988 CHAPTER 1

### PART X

#### LOSS RELIEF AND GROUP RELIEF

#### CHAPTER I

#### LOSS RELIEF: INCOME TAX

VALID FROM 01/05/1995

#### *Schedule A losses*

#### **379A Schedule A losses.**

- (1) Subject to the following provisions of this section, where for any year of assessment any person sustains any loss in a Schedule A business carried on by him either solely or in partnership—
  - (a) the loss shall be carried forward to the following year of assessment and, to the extent that it does not exceed them, set against any profits or gains of that business for the year to which it is carried forward; and
  - (b) where there are no profits or gains for the following year or the profits or gains for that year are exceeded by the amount of the loss, the loss or, as the case may be, the remainder of it shall be so carried forward to the next following year, and so on.
- (2) Subsection (3) below shall apply where a loss is sustained in a Schedule A business for any year of assessment (“the year of the loss”) and one or both of the following conditions is satisfied, that is to say—
  - (a) the amount of the relevant capital allowances treated as expenses of that business in computing that loss exceeds, by any amount (“the net capital

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allowances”), the amount of any charges under the 1990 Act which are treated as receipts of that business in computing that loss;

- (b) the Schedule A business has been carried on in relation to land that consists of or includes an agricultural estate to which allowable agricultural expenses deducted in computing that loss are attributable;

and the relevant capital allowances for the purposes of this subsection are allowances under the 1990 Act other than the whole or, as the case may be, a proportionate part of any allowances made in accordance with section 32(1B) of this Act in respect of expenditure on the provision of machinery or plant which is let, for the whole or a part of the year in question, to a person who does not use it or uses it for purposes other than those of a trade.

- (3) Where the person carrying on the Schedule A business in a case to which this subsection applies makes a claim, in relation to the year of the loss or the year following that year, for relief under this subsection in respect of the loss—

- (a) relief from income tax may be given, for the year to which the claim relates, on an amount of that person’s income for that year which is equal to the amount of relief available for that year in respect of the loss; and
- (b) the loss which is to be or has been carried forward under subsection (1) above shall be treated as reduced (if necessary to nil) by an amount equal to the amount on which relief is given;

but a claim for relief under this subsection shall not be made after the end of twelve months from the 31st January next following the end of the year to which it relates and shall be accompanied by all such amendments as may be required by virtue of paragraph (b) above of any self-assessment previously made by the claimant under section 9 of the Management Act.

- (4) Subject to subsection (5) below, the reference in subsection (3) above to the amount of the relief available for any year in respect of a loss is a reference to whichever is the smallest of the following amounts, that is to say—

- (a) the amount of the relievable income for the year to which the claim relates;
- (b) the loss sustained in the Schedule A business in the year of the loss; and
- (c) the amount which, according to whether one or both of the conditions mentioned in subsection (2) above is satisfied in relation to the year of the loss, is equal—
  - (i) to the net capital allowances,
  - (ii) to the amount of the allowable agricultural expenses for the year of the loss, or
  - (iii) to the sum of the net capital allowances and the amount of those expenses.

- (5) Where relief under subsection (3) above is given in respect of a loss in relation to either of the years in relation to which relief may be claimed in respect of that loss, relief shall not be available in respect of the same loss for the other year except, in a case where the relief already given is of an amount determined in accordance with subsection (4)(a) above, to the extent that the smaller of the amounts applicable by virtue of subsection (4)(b) and (c) above exceeds the amount of relief already given.

- (6) For the purposes of subsection (4)(a) above the amount of relievable income for any year, in relation to any person, shall be equal to the amount of his income for that year—

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- (a) after effect has been given to subsection (1) above in relation to any amount carried forward to that year in respect of a loss sustained in any year before the year of the loss, and
  - (b) in the case of a claim under subsection (3) above in relation to the year of the loss, after effect has been given to any claim under that subsection in respect of a loss sustained in the preceding year.
- (7) For the purposes of this section the loss sustained in any Schedule A business shall be computed in like manner as the profits or gains arising or accruing from such a business are computed under the provisions of the Income Tax Acts applicable to Schedule A.
- (8) In this section “allowable agricultural expenses”, in relation to an agricultural estate, means any disbursements or expenses attributable to the estate which are deductible in respect of maintenance, repairs, insurance or management of the estate and otherwise than in respect of the interest payable on any loan.
- (9) For the purposes of this section the amount of any disbursements or expenses attributable to an agricultural estate shall be determined as if—
- (a) disbursements and expenses were to be disregarded to the extent that they would not have been attributable to the estate if it did not include the parts of it used wholly for purposes other than purposes of husbandry, and
  - (b) disbursements and expenses in respect of parts of the estate used partly for purposes of husbandry and partly for other purposes were to be reduced to an extent corresponding to the extent to which those parts were used for other purposes.
- (10) In this section—
- “agricultural estate” means any land (including any houses or other buildings) which is managed as one estate and which consists of or includes any agricultural land; and
  - “agricultural land” means land, houses or other buildings in the United Kingdom occupied wholly or mainly for the purposes of husbandry.

**Modifications etc. (not altering text)**

- C1 S. 379A restricted (1.5.1995) by [Finance Act 1995 \(c. 4\), s. 41\(8\)](#)
- C2 S. 379A(1) applied (with effect in accordance with s. 39(4)(5) of the affecting Act) by [Finance Act 1995 \(c. 4\), Sch. 6 para. 19\(2\)\(3\)](#)
- C3 S. 379A(3) applied (with effect in accordance with s. 39(4)(5) of the modifying Act) [Finance Act 1995 \(c. 4\), Sch. 6 para. 19\(4\)](#)

VALID FROM 31/07/1998

**[<sup>F1</sup>379B Losses from overseas property business.**

The provisions of section 379A apply in relation to an overseas property business as they apply in relation to a Schedule A business.]

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### Textual Amendments

- F1** S. 379B inserted (with effect in accordance with s. 38(2)(3) of the amending Act) by Finance Act 1998 (c. 36), Sch. 5 para. 27 (with Sch. 5 para. 73)

## *Trade etc. losses*

### 380 Set-off against general income.

- (1) <sup>M1</sup>Where 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 two years after the year of assessment, make a claim for relief from income tax on an amount of his income equal to the amount of the loss.
- (2) <sup>M2</sup>Subject to section 492(2), relief may be given under subsection (1) above in respect of a person's loss sustained in the last preceding year of assessment in any trade, profession, vocation or employment still carried on by him in the year for which the claim is made, in so far as relief in respect of that loss has not already been given under that subsection or otherwise; and where relief is claimed by virtue of this subsection it shall be given in priority to any relief under that subsection in respect of a loss sustained in the year for which the relief is claimed.
- (3) <sup>M3</sup>Where there is in any year of assessment a change on which a trade, profession or vocation is treated under section 113(1) as permanently discontinued, and a person engaged in carrying it on immediately before the change continues to be so engaged immediately afterwards, it shall, notwithstanding the discontinuance, be treated as the same trade, profession or vocation for the purposes of subsection (2) above, except as respects the computation of profits or gains and losses.
- <sup>F2</sup>(4) <sup>M4</sup>This section applies in relation to losses sustained in the occupation of woodlands in respect of which a person has elected under [<sup>F3</sup>paragraph 4 of Schedule 6 to the Finance Act 1988] to be charged to income tax under Schedule D as it applies in relation to losses sustained in a trade.

### Textual Amendments

- F2** See 1988(F) s.148 and Sch.14 Part V regarding repeal of s.380(4) from 6 April 1993.  
**F3** 1988(F) Sch.6 para.8 from 15 March 1988. Previously "section 54".

### Modifications etc. (not altering text)

- C4** 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](#)
- C5** 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)
- C6** S. 380(1) applied with modifications (23.3.1993) by [S.I. 1993/415](#), reg. 9, [Sch.2](#)
- C7** S. 380(1) modified (for the year of assessment 1988-89 only) by [S.I. 1991/851](#), reg. 9, [Sch.2](#).  
S. 380(1) modified (for the year of assessment 1989-90 only) (28.3.1992) by [S.I. 1992/511](#), reg. 9, [Sch.2](#).
- C8** *Treatment of oil extraction activities—see Oil Taxation Acts.*
- C9** See—1990(C) s.142—*restriction of set off of first-year allowances.*

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#### Marginal Citations

- M1** Source—1970 s.168(1)  
**M2** Source—1970 s.168(2)  
**M3** Source—1970 s.168(6)  
**M4** Source—1970 s.168(8)

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

- (1) <sup>M5</sup>Where an individual carrying on a trade sustains a loss in the trade in—
- the year of assessment in which it is first carried on by him; or
  - any of the next three years of assessment;
- he may, by notice given within two years after the year of assessment in which the loss is sustained, make a claim for relief under this section.
- (2) <sup>M6</sup>Subject to section 492 and this section, relief shall be given under subsection (1) above from income tax on an amount of the claimant's income equal to the amount of the loss, 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) <sup>M7</sup>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) <sup>M8</sup>Relief shall not be given under subsection (1) above in respect of a loss sustained in any period unless it is shown that 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.
- (5) Relief shall not be given under subsection (1) above in respect of a loss sustained by an individual in a trade if—
- 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
  - 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) For the purposes of this section an individual carries on a trade whether he does so solely or in partnership; and (except as respects the computation of profits or gains and losses) an individual continues to carry on the same trade notwithstanding a change in the persons engaged in carrying it on if he is engaged in carrying it on immediately before and immediately after the change.
- (7) <sup>M9</sup>This section applies, with the necessary modifications, in relation to a profession or vocation as it applies in relation to a trade.

#### Modifications etc. (not altering text)

- C10** S. 381(1) modified (with effect in accordance with reg. 1(1)(2) of the amending Regulation) by [The Lloyd's Underwriters \(Tax\) \(1991-92\) Regulations 1994 \(S.I. 1994/728\)](#), [reg. 9 Sch. 2](#)
- C11** S. 381(1) modified for the year of assessment 1988-89 by [S.I. 1991/851](#), [reg. 9, Sch.2](#).

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S. 381(1) modified (for the year of assessment 1989-90 only) (28.3.1992) by S.I. 1992/511, reg. 9, Sch.2.

**C12** S. 381(1) applied with modification (23.3.1993) by S.I. 1993/415, reg. 9, Sch.2

**C13** See S.I. 1987 No.530 (in Part III Vol.5) regn. 15—*non-resident entertainers and sportsmen*.

**C14** See 1990(C) s.142—*restriction of set-off of first-year allowances*.

#### Marginal Citations

**M5** Source—1978 s.30(1)

**M6** Source—1978 s.30(2)

**M7** Source—1978 s.30(3)

**M8** Source—1978 s.30(4)-(6)

**M9** Source—1978 s.30(10)

### 382 Provisions supplementary to sections 380 and 381.

(1) <sup>M10</sup> 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) <sup>M11</sup> 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 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<sup>F4</sup>.

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.

(3) <sup>M12</sup> Where relief under section 380 or 381 has been given to a person for any year of assessment, he shall not be entitled, in computing the amount of the assessment for any subsequent year, to a deduction of any portion of the amount in respect of which such relief has been obtained.

(4) For the purposes of sections 380 and 381, the amount of a loss sustained in a trade, (including the occupation of woodlands in a case where section 380(4) applies), profession or vocation shall be computed in like manner as the profits or gains arising or accruing 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.

#### Textual Amendments

**F4** Repealed by 1988(F) s.148 and Sch.14 Part VIII for 1990-91 and subsequent years.

#### Marginal Citations

**M10** Source—1970 s.168(3); 1971 s.16(2)(a); 1978 s.30(7)(a)

**M11** Source—1970 s.168(4); 1978 s.30(7)(a)

**M12** Source—1970 s.168(5), (7), (8); 1978 s.30(7)(a); 1987 Sch.15 2(11)

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

- (1) <sup>M13</sup>Subject to the provisions of this section, any claim made under section 380 or 381 for relief in respect of a loss sustained by the claimant in any trade in any year of assessment (“the year of loss”) may require the amount of that loss to be determined as if an amount equal to the capital allowances for the year of assessment for which the year of loss is the basis year were to be deducted in computing the profits or gains or losses of the trade in the year of loss; and a claim may be so made notwithstanding that apart from those allowances the claimant has not sustained a loss in the trade in the year of loss.
- (2) Capital allowances for any year of assessment shall be taken into account by virtue of this section only if and so far as they are not required to offset balancing charges for the year; and, for the purposes of this subsection, the capital allowances for a year of assessment shall be treated as required to offset balancing charges for the year up to the amount on which the balancing charges fall to be made after deducting from that amount the amount (if any) of capital allowances for earlier years which is carried forward to that year and would, without the balancing charges, be non-effective in that year.
- (3) <sup>M14</sup>In the case of a claim under section 380, where the capital allowances taken into account by virtue of this section are those for the year of assessment for which the claim is made or for the preceding year (the year of loss being the basis year for that year itself, or the claim being made by way of carry-forward of the loss by virtue of section 380(2)) relief shall not be given by reference to those allowances in respect of an amount greater than the amount non-effective in the year for which the claim is made, or, in the case of allowances for the preceding year, the amount non-effective in both years.
- (4) <sup>M15</sup>In the case of a claim under section 381, where the capital allowances taken into account by virtue of this section are those for the year of loss, relief shall not be given by reference to those allowances in respect of an amount greater than the amount non-effective in that year.
- (5) <sup>M16</sup>For the purposes of this section—
  - (a) where the end of the basis period for a year of assessment (as defined in [F<sup>5</sup>section 160 of the 1990 Act]) falls in, or coincides with the end of, any year of assessment, that year is the basis year for the first-mentioned year of assessment, but so that, if a year of assessment would under the foregoing provision be the basis year both for that year itself and for another year of assessment, it shall be the basis year for the year itself and not for the other year;
  - (b) any reference to the capital allowances or balancing charges for a year of assessment shall be construed as a reference to those falling to be made in taxing the trade for that year (but not including, in the case of allowances, any part of the allowances for an earlier year carried forward under [F<sup>5</sup>section 140(4) of the 1990 Act]);
  - (c) any reference to an amount of capital allowances non-effective in a year shall be construed as referring to the amount to which, by reason of an insufficiency of profits or gains, effect cannot be given in taxing the trade for the year; and
  - (d) effect shall be deemed to be given in taxing the trade to allowances carried forward from an earlier year before it is given to allowances arising in a later year.

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- (6) <sup>M17</sup>Where, on a claim made by virtue of this section, relief is not given under section 380 or 381 for the full amount of the loss determined as mentioned in subsection (1) above, the relief shall be referred as far as may be to the loss sustained by the claimant in the trade rather than to the capital allowances in respect of the trade.
- (7) <sup>M18</sup>Subject to subsection (8) below, where for any year of assessment relief is given under section 380 or 381 by reference to any capital allowances, then, for all the purposes of the Income Tax Acts, effect shall be deemed to have been given to those allowances up to the amount in respect of which relief is so given, as if (in accordance with [<sup>F6</sup>section 140(2) of the 1990 Act]) a deduction in respect thereof had been allowed in taxing the trade for that year, or—
- (a) where relief is given under section 380, in the case of allowances for the following year, in taxing the trade for that following year;
  - (b) where relief is given under section 381, in the case of allowances for any later year, in taxing the trade for that later year;

and any relief previously given for a subsequent year on the basis that effect had not been given to the allowances as aforesaid shall be adjusted where necessary by an assessment.

- (8) <sup>M19</sup>Where in any year of assessment a trade is permanently discontinued, or is treated for the purposes of section 113 as permanently discontinued, and, immediately before the discontinuance, the trade was being carried on in partnership, then, notwithstanding subsection (7) above, for the purposes of any claim for relief made by virtue of section 385(5)(c) or 388 and relating to that discontinuance, effect shall not be deemed to have been given either—
- (a) to any part of the capital allowances falling to be made in taxing the trade for that year by reason of relief given under section 380 or 381 by reference to those allowances; or
  - (b) to any part of the capital allowances falling to be made in taxing the trade for the preceding year by reason of relief so given by reference to them, in so far as that relief must be referred to the part of the allowances apportionable to the part of the year within 12 months of the discontinuance on an apportionment made by reference to the comparative lengths of the two parts of the year;

but where the same partner claims relief both under section 380 or 381 and under section 385(5) or 388 in respect of the same allowances, the total amount for which relief is to be given to him by reference thereto shall not exceed the greater of the amounts for which, apart from any deficiency of income, relief might have been given under either section separately, and the total amount for which relief is to be given to all the partners under those sections in respect of any allowances shall not in any event exceed the amount of the allowances to which effect has not been given apart from those sections.

- (9) <sup>M20</sup>Where a person claiming relief under section 380 or 381 has, since the end, where the claim is under section 380, of the year for which the claim is made, or, where the claim is under section 381, of the year of loss, carried on the trade in question in partnership, effect shall not be given to this section in relation to that claim except with the written consent of, or of the personal representatives of, every other person who has been engaged in carrying on the trade between the end of that year and the making of the claim.
- (10) <sup>M21</sup>Where the claim is for a loss sustained before an event treated as the permanent discontinuance of the trade, subsection (9) above shall not require the consent of



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any person as having been so engaged since that discontinuance, or as the personal representative of such a person.

- (11) Relief from tax may be given by virtue of this section by reference to capital allowances for a year of assessment before the passing of any Act granting income tax for that year, as if income tax had been granted for the year without alteration; but if relief given to a person by virtue of this section for any year of assessment is affected by a subsequent alteration of the law, or by any discontinuance of the trade or other event occurring after the end of the year, any necessary adjustment may be made, and so much of any repayment of tax as exceeded the amount repayable in the events that happened may, if not otherwise made good, be assessed under Case VI of Schedule D and recovered from that person accordingly.
- (12) <sup>M22</sup>This section applies (with any necessary adaptations)—
- (a) in the case of a claim under section 380, in relation to a profession, vocation or employment and in relation to the occupation of woodlands the profits or gains of which are assessable under Schedule D by virtue of an election under [<sup>F7</sup>paragraph 4 of Schedule 6 to the Finance Act 1988]; and
  - (b) in relation to a claim under section 381, in relation to a profession or vocation, as it applies in relation to a trade.

#### Textual Amendments

- F5** 1990(C) s.164 and Sch.1 para.8(13)(a). *Previously*  
“section 72 of the 1968 Act”  
*and*  
“section 70(4) of the 1968 Act”  
*respectively.*
- F6** 1990(C) s.164 and Sch.1 para.8(13)(b). *Previously*  
“section 70(2) of the 1968 Act”.
- F7** 1988(F) Sch.6 para.8 from 15 March 1988. *Previously*  
“section 54”; and see 1988(F) Sch.14 Part V for repeals from 6 April 1993.

#### Modifications etc. (not altering text)

- C15** See 1990(C) ss.30-31 (ships)—*carry-forward does not include postponement under ss.30-31.*

#### Marginal Citations

- M13** Source—1970 s.169(1), (2); 1978 s.30(7)(a)  
**M14** Source—1970 s.169(3)  
**M15** Source—1970 s.169(3); 1978 s.30(7)(a), (8)(a)  
**M16** Source—1970 s.169(4); 1978 s.30(7)(a)  
**M17** Source—1970 s.169(5)  
**M18** Source—1970 s.169(6); 1978 s.30(7)(a), (8)(b)  
**M19** Source—1970 s.169(7); 1978 s.30(7)(a)  
**M20** Source—1970 s.169(8); 1978 s.30(7)(a), (8)(c)  
**M21** Source—1970 s.169(8), (9)  
**M22** Source—1970 s.169(10); 1978 s.30(10)

### 384 Restrictions on right of set-off.

- (1) <sup>M23</sup>Subject to subsection (2) below, a loss (including any amount in respect of capital allowances which, by virtue of section 383, is to be treated as a loss) shall not be

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available for relief under section 380 unless it is shown that, 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, or an allowance in respect of expenditure incurred, by any person in the exercise of functions conferred by or under any enactment (including an enactment contained in a local or private Act); or
  - (b) to an allowance in respect of expenditure incurred before 6th April 1960.
- (3) <sup>M24</sup>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) Where in any year of assessment there is a change in the persons engaged in carrying on a trade, then, for the purposes of the application of subsections (1) to (4) above in the case of any person who, being engaged in carrying on the trade immediately before the change, continues to be so engaged immediately after it, the trade carried on by that person immediately before the change shall be treated as continuing to be carried on by him notwithstanding the change, whether or not it falls to be treated for any other purpose as having been discontinued on the change.
- (6) <sup>M25</sup>There shall be disregarded for the purposes of section 383 any allowances made to an individual under Chapter I of Part III of the Finance Act 1971 in respect of expenditure incurred on the provision of machinery or plant 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, the year of the loss (as defined in section 383); 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) <sup>M26</sup>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) <sup>M27</sup>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.
- (9) <sup>M28</sup>For the purposes of subsection (1) above, the fact that a trade was being carried on at any time so as to afford a reasonable expectation of profit shall be conclusive evidence that it was then being carried on with a view to the realisation of profits.

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- (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;
- [<sup>F8</sup> and the Tax Acts shall have effect as if subsections (6) to (8) above were contained in Chapter V of Part II of the 1990 Act, and those subsections are without prejudice to section 142 of that Act.]

#### Textual Amendments

- F8** 1990(C) s.164 and Sch.1 para.8(14). *Previously*  
“and subsection (6) above is without prejudice to section 41 of the Finance Act 1976”.

#### Marginal Citations

- M23** Source—1970 s.170(1)  
**M24** Source—1970 s.170(2)-(4)  
**M25** Source—1980 s.70(1), (5)  
**M26** Source—1980 s.70(2), (5)  
**M27** Source—1980 s.70(4)  
**M28** Source—1970 s.170(5)(6); 1980 s.70(6)

VALID FROM 22/03/2001

#### [<sup>F9</sup> 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
  - (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,

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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

- F9** 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.

- (1) <sup>M29</sup>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 in the same way as profits or gains under the provisions of the Income Tax Acts applicable to Cases I and II of Schedule D) in respect of which relief has not been wholly given either under section 380 or under any other provision of those Acts, he may make a claim requiring that any portion of the loss for which relief has not been so given shall be carried forward and, as far as may be, deducted from or set off against the amount of profits or gains on which he is assessed to income tax under Schedule D in respect of that trade, profession or vocation for subsequent years of assessment.
- (2) In the application of this section to a loss sustained by a partner in a partnership, “the amount of profits or gains on which he is assessed” shall, in respect of any year, be taken to mean such portion of the amount on which the partnership is assessed to income tax under Schedule D in respect of the trade, profession or vocation as he would be required to include in a return of his total income for that year.
- (3) <sup>M30</sup>Any relief under this section shall be given as far as possible from the first subsequent assessment, and so far as it cannot be so given, then from the next assessment, and so on.
- (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 profits or gains 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 profits or gains 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 profits or gains 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) Where there is in any year of assessment a change on which a trade, profession or vocation is treated under section 113 as permanently discontinued, and a person engaged in carrying it on immediately before the change continues to be so engaged immediately thereafter, then—
- (a) the trade, profession or vocation carried on by him immediately before and that carried on immediately after the change shall, notwithstanding the discontinuance, be treated as the same for the purposes of this section, except as respects the computation of profits or gains and losses; and
  - (b) in respect of a loss sustained by him in the trade, profession or vocation in the part of that year before the change, relief shall be given under this section from the assessment relating to the part of the year after the change as if it were an assessment for a subsequent year; and
  - (c) for the purposes of this section, there shall be treated as a loss so sustained in the part of the year before the change his share of the non-effective amount (if any) of any capital allowances falling to be made in taxing the trade, profession or vocation for that part of that year.

For the purposes of paragraph (c) above—

- (i) the persons engaged in carrying on the trade, profession or vocation immediately before the change shall be treated as entitled to capital allowances in the shares in which they are then entitled to the profits of the trade, profession or vocation, and
  - (ii) “the non-effective amount” means, in relation to any such allowances, the amount to which, because of an insufficiency of profits or gains, effect cannot be given in taxing the trade, profession or vocation.
- (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 [<sup>F10</sup>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) So far as a claim under this section concerns the amount of the loss for any year of assessment it must be made within six years after the year of assessment in question, but the question whether any and if so how much relief on that amount should be given under this section against tax for any year of assessment may be the subject of a separate claim made not later than six years after that year of assessment.

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#### Textual Amendments

**F10** 1988(F) Sch.6 para.6(8)from 15March 1988.Previously  
“section 54”.

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**Modifications etc. (not altering text)**

**C16** See 1988(F) Sch.14 Part V—repeal of subs. (6) from 6 April 1993.

**Marginal Citations**

**M29** Source—1970 s.171(1)

**M30** Source—1970 s.171(2)-(7)

**386 Carry-forward where business transferred to a company.**

(1)<sup>M31</sup> 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
- (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 profits or gains 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) Where a change to which subsection (5) of section 385 applies has occurred before a transfer to which this section applies, paragraph (a), but not paragraph (c), of that subsection shall for the purposes of this section apply in relation to the earlier change as it applies for the purposes of that section.

**Marginal Citations**

**M31** Source—1970 s.172

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

- (1)<sup>M32</sup> 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.

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- (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) <sup>M33</sup> to any payment falling within section 349(2);
  - (b) <sup>M34</sup> to any payment falling within section 349 by virtue of section 43(1);
  - (c) to any such payment of rent as is referred to in section 120(4);
  - (d) to any capital sum paid in respect of any patent rights assessed under section 349(1) by virtue of section 524;
  - (e) to any payment of, or on account of, copyright royalties to which section 536 applies [<sup>F11</sup> or royalties in respect of a right in a design to which section 537B applies]; or
  - (f) to any payment to which section 349(1) applies by virtue of section 737.

#### Textual Amendments

**F11** Sch.7 para.36(4) Copyright, Designs and Patents Act 1988 (c.48) from 1 August 1989. (Commencement order—S.I. 1989 No.816—not reproduced.)

#### Marginal Citations

**M32** Source—1970 s.173(1), (2)

**M33** Source—1970 s.173(3)(aa); 1970(F) Sch.4 9(6)

**M34** Source—1970 s.173(3)(a)-(c)

### 388 Carry-back of terminal losses.

- (1) <sup>M35</sup> 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 profits or gains on which he has been charged to income tax under Schedule D in respect of the trade, profession or vocation for the three years of assessment last preceding that in which the discontinuance occurs; 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) <sup>M36</sup> 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 profits or gains of the trade charged to income tax under Schedule D for any year because the amount of those profits or gains is insufficient,

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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 profits or gains 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 profits or gains of the trade for the purpose of assessment 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 profits or gains 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 profits or gains 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) the relevant capital allowances for that year of assessment;
  - (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; and
  - (d) the same fraction of the relevant capital allowances for that preceding year of assessment as the part thereof beginning 12 months before the discontinuance is of a year.
- (7) In subsection (6) above “the relevant capital allowances” means, in relation to any year of assessment, any capital allowances falling to be made in taxing the trade, profession or vocation for that year, excluding amounts carried forward from an earlier year; and 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 profits or gains under the provisions of the Income Tax Acts applicable to Cases I and II of Schedule D.

**Modifications etc. (not altering text)**

**C17** See 1990(C) ss.30-31(*ships*)—*carry forward does not include postponement under 1990(C) ss.30-31.*

**Marginal Citations**

**M35** Source—1970 s.174(1)



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**M36** Source—1970 s.174(2)-(6)

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

- (1) <sup>M37</sup>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 [<sup>F12</sup>Part IV of the 1990 Act], a claim for relief is made both under section 388 above and [<sup>F12</sup>section 17(1) of the 1990 Act] (carry-back of balancing allowances), the balancing allowance in respect of which the claim is made under [<sup>F12</sup>section 17(1)] 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 [<sup>F12</sup>section 17(1)].
- (3) Where a person claiming relief under section 388 on a discontinuance has, since the beginning of the third year of assessment preceding that in which the discontinuance occurs, carried on the trade, profession or vocation in partnership—
  - (a) in section 388(1) “the amount of profits or gains on which he has been charged to income tax” shall be taken to mean, in respect of any year or part of a year for which the partnership was assessed in respect of the trade, profession or vocation, such portion of the amount of the profits or gains on which the partnership has been, or is treated by virtue of section 388(5) as having been, charged to income tax in respect of it for that year or part of a year as would be required to be included in a return of his total income for that year;
  - (b) any reduction in the amount of his terminal loss which falls to be made under section 388(5) by reason of profits or gains having been applied by the partnership in any such year or part of a year in making any payment shall be limited to the same proportion of the profits or gains brought into charge which were so applied; and
  - (c) if he was carrying on the trade, profession or vocation immediately before the discontinuance, the amounts to be included in his terminal loss by virtue of section 388(6)(b) or (d) shall be such part only of the amounts therein mentioned (in so far as they have not otherwise been taken into account so as to reduce or relieve any charge to tax) as would fall to his share on a division made according to the shares in which the partners were then entitled to the profits of the trade, profession or vocation.
- (4) For all 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 113; but—
  - (a) a person who continues to be engaged in carrying it on immediately after such a discontinuance shall not be entitled to relief in respect of any terminal loss on that discontinuance; and
  - (b) on any discontinuance, a person not continuing to be so engaged may be given relief in respect of a terminal loss against profits or gains on which he was charged in respect of the same trade, profession or vocation for a period before a previous discontinuance, if he has been continuously engaged in carrying it on between the two discontinuances, and, in his case, if the previous discontinuance occurred within 12 months before the other—

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- (i) it shall be disregarded for the purposes of paragraphs (a) and (c) of section 388(6), except that those paragraphs shall be taken to include any amount on which relief could have been allowed to him as for a loss sustained before the previous discontinuance by virtue of section 385(5)(c), so far as it is referable to a period within those 12 months; and
  - (ii) paragraph (d) of section 388(6) shall be taken to include the whole amount of the allowances in question instead of the fraction there mentioned.
- (5) Where a trade, profession or vocation is being carried on by any persons in partnership immediately before it is permanently discontinued, relief under section 388 given to one of them on the discontinuance shall not, in relation to a claim made by another of them by virtue of paragraph (c) of section 385(5), be taken to affect the non-effective amount of any allowances within the meaning of that paragraph.
- (6) Subject to subsection (7) below, a claim for relief under section 388 may require that, in so far as they have not been otherwise taken into account so as to reduce or relieve any charge to tax, capital allowances in respect of the trade under <sup>F13</sup>the 1990 Act except Parts III, IV, V (other than section 122) and VII], being allowances which—
- (a) fall to be made to the claimant by way of discharge or repayment of tax, and
  - (b) fall to be so made for the year of assessment in which the discontinuance occurs or the preceding year of assessment,
- shall be added to the terminal loss sustained by him (or, if he has not sustained a terminal loss computed in accordance with the provisions of this section and section 388, shall be treated as a terminal loss so sustained), and the allowances to be taken into account for this purpose may include allowances arising before a previous discontinuance.
- (7) For the purposes of subsection (6) above—
- (a) there shall be taken into account such fraction only of the allowances for the preceding year of assessment referred to in that subsection as the part of that year beginning 12 months before the discontinuance giving rise to the claim is of a year; and
  - (b) the allowances for any year shall not be treated as including any amounts carried forward from an earlier year.
- <sup>F14</sup>(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**

- F12** 1990(C) s.164 and Sch.1 para.8(15)(a). *Previously*  
 “Schedule 13 to the Finance Act 1986”, “section 15(1) of the 1968 Act”, “section 15(1)”  
*and*  
 “section 15(1)”  
*respectively.*
- F13** 1990(C) s.164 and Sch.1 para.8(15)(b). *Previously*  
 “Part I of the 1968 Act or Chapter I of Part III of the Finance Act 1971”.
- F14** See 1988(F) Sch.14 Part V for repeal of subs. (8) from 6 April 1993.

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**Marginal Citations**

**M37** 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.**

<sup>M38</sup>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**

**M38** Source—1970 s.175; 1972 Sch.11 3; 1974 Sch.1 28

**391 Losses from trade etc. carried on abroad.**

- (1) <sup>M39</sup>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) <sup>M40</sup>Relief shall not be given by virtue of subsection (1) above except on income falling within section 65(2) or (3), 192(2), (3) or (4) or 196.

**Marginal Citations**

**M39** Source—1974 s.23(2)(a); 1978 s.30(7)(b)

**M40** Source—1974 s.23(4); 1984 s.30(13)

*Case VI losses*

**392 Case VI losses.**

- (1) <sup>M41</sup>Where in any year of assessment a person sustains a loss in any transaction, whether he was engaged therein solely or in partnership, being a transaction of such a nature that, if any profits had arisen therefrom, he would have been liable to be assessed to income tax in respect thereof under Case VI of Schedule D, he may make a claim requiring—
  - (a) that the amount of the loss sustained by him shall, as far as may be, be deducted from or set off against the amount of any profits or gains arising from any transaction in respect of which he is assessed for that year under that Case, and

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- (b) that any portion of the loss for which relief is not so given shall, as far as may be, be carried forward and deducted from or set off against the amount of any profits or gains arising from any transaction in respect of which he is assessed to income tax under that Case for any subsequent year of assessment.
- (2) In the application of this section to a loss sustained by a partner in a partnership, “the amount of any profits or gains arising from any transaction in respect of which he is assessed” shall be taken to mean in respect of any year such portion of the amount on which the partnership is assessed under Case VI of Schedule D in respect of any transaction as falls to be taken into account in computing his total income for that year.
- (3) Any relief under this section by way of the carrying forward of the loss shall be given as far as possible from the first subsequent assessment in respect of any profits or gains arising from any transaction in respect of which he is assessed under Case VI of Schedule D for any year, and, so far as it cannot be so given, then from the next such assessment, and so on.
- (4) This section does not apply to any loss sustained in a transaction falling within section 34, 35 or 36.
- (5) So far as a claim under this section concerns the amount of the loss for any year of assessment, it must be made within six years after the year of assessment in question; but the question whether any and if so how much relief on that amount should be given under this section against tax for any year of assessment may be the subject of a separate claim made not later than six years after that year of assessment.

#### Marginal Citations

**M41** Source—1970 s.176

## CHAPTER II

### LOSS RELIEF: CORPORATION TAX

#### Modifications etc. (not altering text)

**C18** See s.434A—limitations on loss relief for life assurance company.

VALID FROM 31/07/1998

#### *Losses from Schedule A business or overseas property business*

#### **392A Schedule A losses.**

- (1) Where a company incurs a Schedule A loss in an accounting period, the loss shall be set off for the purposes of corporation tax against the company’s total profits for that period.
- (2) To the extent that a company’s Schedule A loss cannot be set off under subsection (1), it shall, if the company continues to carry on the Schedule A business in the

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succeeding accounting period, be carried forward to that period and be treated for the purposes of this section as a Schedule A loss of that period.

- (3) Where an investment company ceases to carry on a Schedule A business but continues to be an investment company, any Schedule A loss that cannot be used under the preceding provisions shall be carried forward to the succeeding accounting period and be treated for the purposes of section 75 as if it had been disbursed as expenses of management for that period.
- (4) In this section—
  - (a) a “Schedule A loss” means a loss incurred by a company in a Schedule A business carried on by it; and
  - (b) “investment company” has the same meaning as in Part IV.
- (5) The preceding provisions of this section apply to a Schedule A business only to the extent that it is carried on—
  - (a) on a commercial basis, or
  - (b) in the exercise of statutory functions.
- (6) For the purposes of subsection (5)(a)—
  - (a) a business or part is not carried on on a commercial basis unless it is carried on with a view to making a profit, but if it is carried on so as to afford a reasonable expectation of profit it is treated as carried on with a view to making a profit; and
  - (b) if there is a change in the manner in which a business or part is carried on, it is treated as having been carried on throughout an accounting period in the way in which it was being carried on by the end of the period.
- (7) In subsection (5)(b) “statutory functions” means functions conferred by or under any enactment (including an enactment contained in a local or private Act).

**Modifications etc. (not altering text)**

**C19** S. 392A modified (with effect in accordance with s. 70(1) of the modifying Act) by [Finance Act 2001 \(c. 9\)](#), [Sch. 22 para. 17\(1\)](#) (with [Sch. 22 para. 32](#))

**392B Losses from overseas property business.**

- (1) Where in any accounting period a company incurs a loss in an overseas property business (whether carried on by it solely or in partnership)—
  - (a) the loss shall be carried forward to the succeeding accounting period and set against any profits of the business for that period,
  - (b) if there are no profits of the business for that period, or if the profits for that period are exceeded by the amount of the loss, the loss or the remainder of it shall be carried forward again and set against any profits of the business for the next succeeding accounting period,and so on.
- (2) Subsections (5) to (7) of section 392A apply in relation to relief under subsection (1) above and an overseas property business as they apply in relation to relief under section 392A(1) to (3) and a Schedule A business.

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**Modifications etc. (not altering text)**

- C20** S. 392B excluded (19.7.2006) by Finance Act 2006 (c. 25), s. 113(5), **Sch. 17 para. 12(2)**  
**C21** S. 392B excluded by The Authorised Investment Funds (Tax) Regulations 2006 (S.I. 2006/964), **reg. 69X(5)** (as inserted (6.4.2008) by The Authorised Investment Funds (Tax) (Amendment) Regulations 2008 (S.I. 2008/705), **regs. 1, 5**)

*Trade etc. losses*

**393 Losses other than terminal losses.**

- (1) <sup>M42</sup>Where in any accounting period a company carrying on a trade incurs a loss in the trade, the company may make a claim requiring that the loss be set off for the purposes of corporation tax against any trading income from the trade in succeeding accounting periods; and (so long as the company continues to carry on the trade) its trading income from the trade in any succeeding accounting period shall then be treated as reduced by the amount of the loss, or by so much of that amount as cannot, on that claim or on a claim (if made) under subsection (2) below, be relieved against income or profits of an earlier accounting period.
  - (2) Subject to section [<sup>F15</sup>492(3)], where in any accounting period ending after 5th April 1988 a company carrying on a trade incurs a loss in the trade, then (subject to subsection (5) below) the company may make a claim requiring that the loss be set off for the purposes of corporation tax against profits (of whatever description) of that accounting period and, if the company was then carrying on the trade and the claim so requires, of preceding accounting periods ending within the time specified in subsection (3) below; and, subject to that subsection and to any relief for an earlier loss, the profits of any of those periods shall then be treated as reduced by the amount of the loss, or by so much of that amount as cannot be relieved under this subsection against profits of a later accounting period.
  - (3) The time referred to in subsection (2) above is a time equal in length to the accounting period in which the loss is incurred; but the amount of the reduction which may be made under that subsection in the profits of an accounting period falling partly before that time shall not exceed a part of those profits proportionate to the part of the period falling within that time.
  - (4) <sup>M43</sup>Where a company incurs a loss in a trade in an accounting period for which one or more first-year allowances fall to be made to it under [<sup>F16</sup>Part II of the 1990 Act] in respect of expenditure on the provision for the purposes of the trade of machinery or plant, subsections (2) and (3) above shall have effect in relation to so much of the loss as does not exceed the allowance or allowances which are so made as if the time specified in subsection (3) above were a period of three years ending immediately before the accounting period in which the loss is incurred.
- [<sup>F17</sup>(4A) Where a company carrying on a ring fence trade incurs a loss in that trade in an accounting period for which an allowance falls to be made to it under section 62A of the 1990 Act, subsections (2) and (3) above shall have effect in relation to so much of the loss as does not exceed that allowance as if the time specified in subsection (3) above were a period of three years ending immediately before the accounting period in which the loss is incurred.

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(4B) In subsection (4A) above “ring fence trade” has the same meaning as in section 62A of the 1990 Act.]

(5) <sup>M44</sup>Subsection (2) above shall not apply to trades falling within Case V of Schedule D; and, except in so far as it represents an excess in respect of expenditure incurred before the year 1960-61 of capital allowances over balancing charges, a loss incurred in a trade in any accounting period shall not be relieved under that subsection unless the trade is one carried on in the exercise of functions conferred by or under any enactment (including an enactment contained in a local or private Act), or it is shown that for that accounting period the trade was being carried on on a commercial basis and with a view to the realisation of gain in the trade or in any larger undertaking of which the trade formed part.

This subsection has effect without prejudice to section 397.

(6) For the purposes of subsection (5) above, the fact that a trade was being carried on at any time so as to afford a reasonable expectation of gain shall be conclusive evidence that it was then being carried on with a view to the realisation of gain; and where in an accounting period there is a change in the manner in which a trade is being carried on, it shall for those purposes be treated as having throughout the accounting period been carried on in the way in which it was being carried on by the end of that period.

(7) The amount of a loss incurred in a trade in an accounting period shall be computed for the purposes of this section in the same way as trading income from the trade in that period would have been computed.

(8) For the purposes of this section “trading income” means, in relation to any trade, the income which falls or would fall to be included in respect of the trade in the total profits of the company; but where—

- (a) in an accounting period a company incurs a loss in a trade in respect of which it is within the charge to corporation tax under Case I or V of Schedule D, and
- (b) in any later accounting period to which the loss or any part of it is carried forward under subsection (1) above relief in respect thereof cannot be given, or cannot wholly be given, because the amount of the trading income of the trade is insufficient,

any interest or dividends on investments which would fall to be taken into account as trading receipts in computing that trading income but for the fact that they have been subjected to tax under other provisions shall be treated for the purposes of subsection (1) above as if they were trading income of the trade.

(9) Where in an accounting period the charges on income paid by a company—

- (a) exceed the amount of the profits against which they are deductible, and
- (b) include payments made wholly and exclusively for the purposes of a trade carried on by the company,

then, up to the amount of that excess or of those payments, whichever is the less, the charges on income so paid shall in computing a loss for the purposes of subsection (1) above be deductible as if they were trading expenses of the trade.

(10) In this section references to a company carrying on a trade refer to the company carrying it on so as to be within the charge to corporation tax in respect of it.

(11) A claim under subsection (1) above must be made within six years after the end of the accounting period in which the loss is incurred, and must be so made notwithstanding that relief cannot be given in respect of the loss until after the end of that period of six

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years; and a claim under subsection (2) above must be made within two years from the end of the accounting period in which the loss is incurred.

#### Textual Amendments

- F15** 1990 s.89 and Sch.14 para.7 (correction of errors)—*deemed always to have had effect. Previously “492(2)”.*
- F16** 1990(C) s.164 and Sch.1 para.8(16). *Previously “Chapter I of Part III of the Finance Act 1971”.*
- F17** 1990 s.61.

#### Modifications etc. (not altering text)

- C22** See 1990 s.99(2) and (4) for changes in relation to income tax falling to be set off against corporation tax for accounting periods ending after the appointed day (see 1988 s.10).
- C23** See [Trustee Savings Banks Act 1985 \(c.58\)](#) s.5 and Sch.2 para.6(4)—*carry forward of losses where transfer to successor from existing bank under the Trustee Savings Banks Act 1985.*
- C24** See 1970(M) ss.41A/B/C—*determinations of corporation tax in relation to accounting periods ending after the appointed day (see 1988 s.10).*
- C25** See 1990 s.99(2) and (4) and 132 and Sch.19 Part V for changes in relation to income tax falling to be set off against corporation tax for accounting periods ending after the appointed day (see 1988 s.10).

#### Marginal Citations

- M42** Source—1970 s.177(1)-(3)
- M43** Source—1970 s.177(3A); 1971 Sch.8 16(6); 1972 s.67(2)(c); 1985 s.60
- M44** Source—1970 s.177(4)-(10)

VALID FROM 25/07/1991

#### **[393A]** <sup>F18</sup> **Losses: set off against profits of the same, or an earlier, accounting period.**

- (1) Subject to section 492(3), where in any accounting period ending on or after 1st April 1991 a company carrying on a trade incurs a loss in the trade, then, subject to subsection (3) below, the company may make a claim requiring that the loss be set off for the purposes of corporation tax against profits (of whatever description)—
- (a) of that accounting period, and
  - (b) if the company was then carrying on the trade and the claim so requires, of preceding accounting periods falling wholly or partly within the period specified in subsection (2) below;
- and, subject to that subsection and to any relief for an earlier loss, the profits of any of those accounting periods shall then be treated as reduced by the amount of the loss, or by so much of that amount as cannot be relieved under this subsection against profits of a later accounting period.
- (2) The period referred to in paragraph (b) of subsection (1) above is the period of three years immediately preceding the accounting period in which the loss is incurred; but the amount of the reduction that may be made under that subsection in the profits of an accounting period falling partly before the beginning of that period shall not exceed a part of those profits proportionate to the part of the accounting period falling within that period.



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- (3) Subsection (1) above shall not apply to trades falling within Case V of Schedule D; and a loss incurred in a trade in any accounting period shall not be relieved under that subsection unless—
- (a) the trade is one carried on in the exercise of functions conferred by or under any enactment (including an enactment contained in a local or private Act), or
  - (b) it is shown that for that accounting period the trade was being carried on on a commercial basis and with a view to the realisation of gain in the trade or in any larger undertaking of which the trade formed part;
- but this subsection is without prejudice to section 397.
- (4) For the purposes of subsection (3) above—
- (a) the fact that a trade was being carried on at any time so as to afford a reasonable expectation of gain shall be conclusive evidence that it was then being carried on with a view to the realisation of gain; and
  - (b) where in an accounting period there is a change in the manner in which a trade is being carried on, it shall be treated as having throughout the accounting period been carried on in the way in which it was being carried on by the end of that period.
- (5) A claim under subsection (1) above may require that capital allowances in respect of the trade, being allowances that fall—
- (a) to be made to the company by way of discharge or repayment of tax, and
  - (b) to be so made for an accounting period ending on or after 1st April 1991,
- shall (so far as they cannot be otherwise taken into account so as to reduce or relieve any charge to corporation tax in respect of that, or any earlier, accounting period) be added to the loss incurred by the company in that accounting period or, if the company has not incurred a loss in the period, shall be treated as a loss so incurred.
- (6) For the purposes of subsection (5) above, the allowances for any period shall not be treated as including amounts carried forward from an earlier period.
- (7) Where a company ceases to carry on a trade, subsection (9) of section 393 shall apply in computing for the purposes of this section a loss in the trade in the accounting period in which the cessation occurs as it applies in computing a loss in an accounting period for the purposes of subsection (1) of that section.
- (8) Relief shall not be given by virtue of subsection (1)(b) above in respect of a loss incurred in a trade so as to interfere with any relief under section 338 in respect of payments made wholly and exclusively for the purposes of that trade.
- (9) For the purposes of this section—
- (a) the amount of a loss incurred in a trade in an accounting period shall be computed in the same way as trading income from the trade in that period would have been computed;
  - (b) “trading income” means, in relation to any trade, the income which falls or would fall to be included in respect of the trade in the total profits of the company; and
  - (c) references to a company carrying on a trade refer to the company carrying it on so as to be within the charge to corporation tax in respect of it.

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(10) A claim under subsection (1) above may only be made within the period of two years immediately following the accounting period in which the loss is incurred or within such further period as the Board may allow.

(11) In any case where—

- (a) by virtue of section 62B of the 1990 Act (post-cessation abandonment expenditure related to offshore machinery or plant) the qualifying expenditure of the company for the chargeable period related to the cessation of its ring fence trade is treated as increased by any amount, or
- (b) by virtue of section 109 of that Act (restoration expenditure incurred after cessation of trade of mineral extraction) any expenditure is treated as qualifying expenditure incurred by the company on the last day on which it carried on the trade,

then, in relation to any claim under subsection (1) above to the extent that it relates to an increase falling within paragraph (a) above or to expenditure falling within paragraph (b) above, subsection (10) above shall have effect with the substitution of “five years” for “two years”.]

#### Textual Amendments

**F18** S. 393A inserted by [Finance Act 1991 \(c. 31, SIF 63:1\)](#), s. 73(1)(4)(5)

VALID FROM 21/07/2008

#### **[<sup>F19</sup>393B] Losses of ring fence trade: set off against profits of an earlier accounting period**

- (1) This section applies if these conditions are met—
  - (a) a company makes a claim under section 393A(1) requiring that a loss incurred in a ring fence trade be set off against profits;
  - (b) section 393A(2A) applies in relation to that claim (three year set off period) by virtue of—
    - (i) section 393A(2B) (loss precedes cessation of trade), or
    - (ii) section 393A(2C) (loss arises in year when general decommissioning expenditure incurred); and
  - (c) the loss incurred in the ring fence trade that may be set off under section 393A (“L”) exceeds the profits against which L may be set off under section 393A (“P”).
- (2) The profits of the ring fence trade of an accounting period are to be relieved under subsection (3) if that period—
  - (a) falls wholly or partly before the three year set off period, and
  - (b) ends on or after 17 April 2002.
- (3) Subject to any relief for an earlier loss, those profits of that accounting period shall be treated as reduced by—
  - (a) the amount by which L exceeds P, or

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- (b) so much of that amount as cannot be relieved under this subsection against profits of the ring fence trade of a later accounting period.
- (4) Subsection (3) is subject to subsection (5) in the case of an accounting period that falls partly (but not wholly) before the three year set off period.
- (5) The amount of the reduction of the profits of the ring fence trade that may be made under subsection (3) shall not exceed a part of those profits proportionate to the part of the accounting period that falls before the three year set off period.
- (6) Subsection (3) is subject to subsection (7) in the case of an accounting period that begins before 17 April 2002 and ends on or after that date.
- (7) The amount of the reduction of the profits of the ring fence trade that may be made under subsection (3) shall not exceed a part of those profits proportionate to the part of the accounting period that falls after 16 April 2002.
- (8) In this section—  
“ring fence” has the same meaning as in section 162 of the Capital Allowances Act;  
“three year set off period” means the period of three years that applies to the claim under section 393A(1) by virtue of section 393A(2A) and section 393A(2B) or (2C).]

#### Textual Amendments

- F19** S. 393B inserted (with effect in accordance with s. 111(3) of the amending Act) by Finance Act 2008 (c. 9), s. 111(1)

### 394 Terminal losses.

- (1)<sup>M45</sup>Where a company ceasing to carry on a trade after 5th April 1988 has in any accounting period falling wholly or partly within the previous 12 months incurred a loss in the trade, the company may make a claim requiring that the loss be set off for the purposes of corporation tax against trading income from the trade in accounting periods falling wholly or partly within the three years preceding those 12 months (or within any less period throughout which the company has carried on the trade); and, subject to subsections (2) to (6) below and to any relief for earlier losses, the trading income of any of those periods shall be then treated as reduced by the amount of the loss, or by so much of that amount as cannot be relieved under this subsection against income of a later accounting period.
- (2) Relief under subsection (1) above shall not be given in respect of any loss in so far as the loss has been or can be otherwise taken into account so as to reduce or relieve any charge to tax.
- (3)<sup>M46</sup>Where a loss is incurred in an accounting period falling partly outside the 12 months mentioned in subsection (1) above, relief shall be given under that subsection in respect of a part only of that loss proportionate to the part of the period falling within those 12 months; and the amount of the reduction which may be made under that subsection in the trading income of an accounting period falling partly outside the three years there mentioned shall not exceed a part of that income proportionate to the part of the period falling within those three years.

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- (4) A claim for relief under this section may require that capital allowances in respect of the trade, being allowances which fall to be made to the company by way of discharge or repayment of tax, and to be so made for an accounting period falling wholly or partly within the 12 months ending when the company ceases to carry on the trade, shall (so far as they cannot be otherwise taken into account so as to reduce or relieve any charge to corporation tax) be added to the loss incurred by the company in that accounting period or, if the company has not incurred a loss in the period, shall be treated as a loss so incurred.

For the purposes of this subsection the allowances for any period shall not be treated as including amounts carried forward from an earlier period.

- (5) Subsections (7) to (10) of section 393 shall apply for the purposes of this section as they apply for the purposes of subsection (1) of that section; and relief shall not be given under this section in respect of a loss incurred in a trade so as to interfere with any relief under section 338 in respect of payments made wholly and exclusively for the purposes of that trade.
- (6) A claim under this section must be made within six years from the time when the company ceases to carry on the trade.

**Modifications etc. (not altering text)**

**C26** See 1990(C) s.17(2)—*mining structures etc. (balancing allowances)—claim under s.394 to take precedence.*

**Marginal Citations**

**M45** Source—1970 s.178(1)

**M46** Source—1970 s.178(2)-(5)

**395 Leasing contracts and company reconstructions.**

- (1) Subject to the provisions of this section, if— <sup>M47</sup>
- (a) under a contract entered into on or after 6th March 1973 a company (“the first company”) incurs capital expenditure on the provision of machinery or plant which the first company lets to another person by another contract (a “leasing contract”); and
  - (b) apart from this subsection, the first company would be entitled to claim relief under subsection (1) or (2) of section 393 in respect of losses incurred on the leasing contract; and
  - (c) in the accounting period for which a first-year allowance, [<sup>F20</sup>within the meaning of Part II of the 1990 Act], in respect of the expenditure referred to in paragraph (a) above is made to the first company, arrangements are in existence by virtue of which, at some time during or after the expiry of that accounting period, a successor company will be able to carry on any part of the first company’s trade which consists of or includes the performance of all or any of the obligations which, apart from the arrangements, would be the first company’s obligations under the leasing contract,

then, in the accounting period specified in paragraph (c) above and in any subsequent accounting period, the first company shall not be entitled to claim relief as mentioned

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- in paragraph (b) above except in computing its profits (if any) arising under the leasing contract.
- (2) For the purposes of this section a company is a successor of the first company if the circumstances are such that—
- (a) section 343 applies in relation to the first company and the other company as the predecessor and the successor within the meaning of that section; or
  - (b) the two companies are connected with each other within the terms of section 839.
- (3) For the purposes of this section losses incurred on a leasing contract and profits arising under such a contract shall be computed as if the performance of the leasing contract were a trade begun to be carried on by the first company, separately from any other trade which it may carry on, at the commencement of the letting under the leasing contract.
- (4) In determining whether the first company would be entitled to claim relief as mentioned in subsection (1)(b) above, any losses incurred on the leasing contract shall be treated as incurred in a trade carried on by that company separately from any other trade which it may carry on.
- (5) In this section “arrangements” means arrangements of any kind whether in writing or not.

#### Textual Amendments

**F20** 1990(C) s.164 and Sch.1 para.8(17). *Previously*  
“within the meaning of Chapter I of Part III of the Finance Act 1971”.

#### Marginal Citations

**M47** Source—1973 ss.30, 32(6)

### Case VI losses

#### 396 Case VI losses.

- (1) <sup>M48</sup> Subject to subsection (2) below, where in any accounting period a company incurs a loss in a transaction in respect of which the company is within the charge to corporation tax under Case VI of Schedule D, the company may make a claim requiring that the loss be set off against the amount of any income arising from transactions in respect of which the company is assessed to corporation tax under that Case for the same or any subsequent accounting period; and the company’s income in any accounting period from such transactions shall then be treated as reduced by the amount of the loss, or by so much of that amount as cannot be relieved under this section against income of an earlier accounting period.
- (2) This section shall not apply to a loss incurred in a transaction falling within section 34, 35 or 36.
- (3) A claim under this section must be made within six years after the end of the accounting period in which the loss is incurred and must be so made notwithstanding that relief cannot be given in respect of the loss until after the end of that period of six years .

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**Modifications etc. (not altering text)**

- C27** S. 396 restricted (27.7.1993 with application as mentioned in s. 165 of the amending Act) by 1993 c. 34, ss. 129(9), 165
- C28** S. 396 modified (with application in accordance with Sch. 5 para. 72(2) of the modifying Act) by Finance Act 1998 (c. 36), Sch. 5 para. 72(1)
- C29** S. 396 modified by The Insurance Companies (Taxation of Reinsurance Business) Regulations 1995 (S.I. 1995/1730), reg. 7A (as inserted (28.10.2003 with effect in accordance with reg. 1(3) of the modifying S.I.) by The Insurance Companies (Taxation of Reinsurance Business) (Amendment No. 2) Regulations 2003 (S.I. 2003/2573), reg. 8(1))
- C30** See 1990 ss.99(3) and (4) and 132 and Sch. 19 Part V for changes in relation to income tax falling to be set off against corporation tax for accounting periods ending after the appointed day (see 1988 s.10). S. 396(1) restricted (27.7.1993 with application as mentioned in s. 165 of the amending Act) by 1993 c. 34, ss. 129(9), 165

**Marginal Citations**

- M48** Source—1970 s.179

## CHAPTER III

### LOSS RELIEF: MISCELLANEOUS PROVISIONS

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

- (1) <sup>M49</sup> Any loss incurred in a trade of farming or market gardening shall be excluded from section 380 if in each of the prior five years a loss was incurred in carrying on that trade; and where a loss is so excluded any related capital allowance shall also be excluded from that section.
- (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) Subsections (1) and (2) above shall not restrict relief for any loss or for any capital allowance, if it is shown by the claimant—
  - (a) that 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) that, if that farmer or market gardener had undertaken those activities at the beginning of the prior period of loss, he 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) Subsections (1) and (2) above shall not restrict relief where the carrying on of the trade forms part of, and is ancillary to, a larger trading undertaking.
- (5) In this section—

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“basis year”, in relation to any capital allowance, shall be construed in accordance with section 383(5)(a);

“chargeable period”, in relation to a company, means any accounting period, or any basis period ending before its first accounting period, “basis period” having the meaning given by [<sup>F21</sup>section 160 of the 1990 Act];

“prior five years”—

(a) in relation to a loss incurred in a year of assessment, means the last five years of assessment before that year, and

(b) in relation to a loss incurred in a company’s accounting period, means the last five years before the beginning of the accounting period;

“prior period of loss” means the prior five years, except that, if losses were incurred in the trade in successive years of assessment or 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 in applying this definition to a chargeable period of a company “losses” means losses computed without regard to capital allowances; and

“farming” and “market gardening” shall be construed in accordance with the definitions of those terms in section 832, but as if those definitions were not restricted to activities in the United Kingdom.

(6) For the purposes of this section, a capital allowance is related to a loss incurred in a trade if it falls to be made in taxing that trade and its basis year is the year of assessment in which the loss was incurred.

(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 Case I of Schedule D shall be applied; and in this section “loss computed without regard to capital allowances” means, in relation to a chargeable period of a company, a loss so ascertained, but so that, notwithstanding [<sup>F22</sup>section 144(2) of the 1990 Act], no account shall be taken of any allowance or charge under any of the Capital Allowances Acts.

(8) Subsections (1) and (2) above 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, a trade shall be treated as discontinued, and a new trade set up, in any event which under any of the provisions of the Tax Acts is to be treated as equivalent to the permanent discontinuance or setting up of a trade.

(9) For the purposes of subsection (8) above a trade shall not be treated as discontinued if, under section 343(2), it is not to be treated as discontinued for the purpose of capital allowances and charges.

(10) Where at any time there has been a change in the persons engaged in carrying on a trade, this section shall, notwithstanding subsection (8) above, apply to any person who was engaged in carrying on the trade immediately before and immediately after the change as if the trade were the same before and after without any discontinuance, and as if—

(a) a husband and his wife were the same person, and

(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;

and accordingly relief from income tax or from corporation tax may be restricted under this section by reference to losses some of which are incurred in years of assessment and some, computed without regard to capital allowances, are incurred in a company’s chargeable periods.

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

#### Textual Amendments

- F21** 1990(C) s.164 and Sch.1 para.8(18)(a). *Previously*  
“section 72 of the 1968 Act”.
- F22** 1990(C) s.164 and Sch.1 para.8(18)(b). *Previously*  
“section 73(2) of the 1968 Act”.

#### Marginal Citations

- M49** Source—1970 s.180; 1986 s.56(7) Sch.13 2(5)

### 398 Transactions in deposits with and without certificates or in debts.

<sup>M50</sup>Where a person sustains a loss on the exercise or disposal of a right to receive any amount, being a right to which section 56(2) applies, in a case where—

- (a) if a profit had arisen from that exercise or disposal, that profit would have been chargeable to tax by virtue of section 56(2), and
- (b) he is chargeable to tax under Schedule C or D in respect of interest payable on that amount,

then the amount of that interest shall be included in the amounts against which he may claim to set off the amount of his loss under section 392 or, as the case may be, 396.

#### Marginal Citations

- M50** Source—1973 s.26(2); 1974 s.30(2)

### 399 Dealings in commodity futures etc: withdrawal of loss relief.

- (1) <sup>M51</sup>If, apart from section 72(1) of the Finance Act 1985 or section 128 above, gains arising to any person in the course of dealing in commodity or financial futures or in qualifying options would constitute, for the purposes of the Tax Acts, profits or gains chargeable to tax under Schedule D otherwise than as the profits of a trade, then any loss arising in the course of that dealing shall not be allowable against profits or gains which are chargeable to tax under Schedule D.
- (2) <sup>M52</sup>Relief shall not be given to any person under section 380, 381 or 393(2) in respect of a loss sustained in a trade of dealing in commodity futures if—
  - (a) the loss was sustained in a trade carried on in partnership and that person or one or more of the other partners was a company; and
  - (b) a scheme has been effected or arrangements have been made (whether by the partnership agreement or otherwise) such that the sole or main benefit that might be expected to accrue to that person from his interest in the partnership was the obtaining of a reduction in tax liability by means of any such relief.
- (3) Where relief has been given in a case to which subsection (2) above applies it shall be withdrawn by the making of an assessment under Case VI of Schedule D.
- (4) Subsection (2) above does not apply where the scheme was effected or the arrangements were made wholly before 6th April 1976.



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- (5) <sup>M53</sup>In this section “commodity futures”, “financial futures” and “qualifying options” have the same meanings as in section 72 of the Finance Act 1985, and the reference in subsection (1) to a loss arising in the course of dealing in commodity or financial futures includes any loss which is regarded as arising in the course of such dealing by virtue of subsection (2A) of that section.

#### Marginal Citations

**M51** Source—1985 s.72(1); 1987 (No.2) s.81(1)

**M52** Source—1978 s.31

**M53** Source—1985 s.72(2); 1987 Sch.15 11(2); 1987 (No.2) s.81(1)

### 400 Write-off of government investment.

- (1) <sup>M54</sup>Where any amount of government investment in a body corporate is written-off on or after 6th April 1988, an amount equal to the amount written-off shall be set off against the body’s tax losses as at the end of the accounting period ending last before the write-off date and, to the extent to which that amount exceeds those losses, against the body’s tax losses as at the end of the next accounting period and so on.
- (2) For the purposes of subsection (1) above a body’s tax losses as at the end of an accounting period are—
- (a) any losses which under section 393(1) are or, if a claim had been made under that subsection, would be available for relief against its trading income for the next accounting period;
  - (b) in the case of an investment company, any expenses of management or charges on income which under section 75(3) are available for carry forward to the next accounting period;
  - (c) any allowances which under [<sup>F23</sup>section 145(2) of the 1990 Act] are available for carry forward to the next accounting period;
  - (d) any amount paid by way of charges on income so far as it exceeds the company’s profit for the period and is not taken into account under 75(3) or 393(9); and
  - (e) any allowable losses available under 345 so far as not allowed in that or a previous accounting period.
- (3) The set off to be made under subsection (1) above for any accounting period shall be made first against the amounts in paragraphs (a) to (d) of subsection (2) above and, so far as it cannot be so made, against the amount in paragraph (e) of that subsection.
- (4) For the purposes of subsection (1) above there shall be excluded from a body’s tax losses as at the end of the accounting period ending last before the write-off date any amounts in respect of which a claim has been made before the write-off date under section 393(2) or 402 of this Act or [<sup>F24</sup>section 145(3) of the 1990 Act] but the body’s tax losses as at the end of any subsequent accounting period shall be determined as if no such claim had been made on or after that date.
- (5) Any amount that could be set off under subsection (1) above against a body’s tax losses as at the end of an accounting period (or could be so set off if that body then had any such losses) may be set off against the tax losses of any other body corporate which at the end of that period is a member of the same group as the first-mentioned body,

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or partly against the tax losses of one member of that group and partly against those of the other or any of the others, as may be just and reasonable.

- (6) Expenditure shall not be treated for the purposes of [F25]section 153 of the 1990 Act] or section 42 of the 1979 Act as met by the Crown by reason only of the writing-off of any government investment in the body in question and a sum shall not by reason only of any such writing-off be treated as not having been deductible in computing the profits or gains of that body for the purposes of Case I or II of Schedule D.
- (7) For the purposes of this section an amount of government investment in a body corporate is written-off—
- (a) if its liability to repay any money lent to it out of public funds by a Minister of the Crown is extinguished;
  - (b) if any of its shares for which a Minister of the Crown has subscribed out of public funds are cancelled; or
  - (c) if its commencing capital debt is reduced otherwise than by being paid off or its public dividend capital is reduced otherwise than by being repaid (including, in either case, a reduction to nil);

and the amount written-off and the write-off date are the amount in respect of which the liability is extinguished and the date on which it is extinguished, the amount subscribed for the shares that are cancelled and the date of cancellation or the amount of reduction in the commencing capital debt or public dividend capital and the date of the reduction, as the case may be.

- (8) In subsection (7) above “commencing capital debt” means any debt to a Minister of the Crown assumed as such under an enactment and “public dividend capital” means any amount paid by a Minister of the Crown under an enactment in which that amount is so described or under an enactment corresponding to an enactment in which a payment made on similar terms to another body is so described.
- (9) This section shall not have effect in relation to any amount written-off if and to the extent to which it is replaced by money lent, or a payment made, out of public funds or by shares subscribed for, whether for money or money’s worth, by a Minister of the Crown.
- (10) In this section—
- “body corporate” means any body corporate which is a company for the purposes of corporation tax;
- “group” means a company having one or more 51 per cent. subsidiaries and that or those subsidiaries; and
- “Minister of the Crown” includes a Northern Ireland department.

#### Textual Amendments

- F23** 1990(C) s.164and Sch.1 para.8(19)(a).Previously  
“section 74(2) of the 1968 Act”.
- F24** 1990(C) s.164and Sch.1 para.8(19)(b).Previously  
“section 74(3) of the 1968 Act”.
- F25** 1990(C) s.164and Sch.1 para.8(19)(c).Previously  
“section 84 of the 1968 Act”.

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### Marginal Citations

**M54** Source—1981 s.48

## 401 Relief for pre-trading expenditure.

- (1) <sup>M55</sup>Where a person incurs expenditure for the purposes of a trade, profession or vocation before the time when he begins to carry it on and the expenditure—
- (a) is incurred not more than [<sup>F26</sup>five] years before that time; and
  - (b) is not allowable as a deduction in computing his profits or gains from the trade, profession or vocation for the purposes of Case I or II of Schedule D but would have been so allowable if incurred after that time,
- the expenditure shall be treated for the purposes of corporation tax as incurred on the day on which the trade, profession or vocation is first carried on by him and for the purposes of relief under Chapter I of this Part as if it were the amount of a loss sustained by him in the trade, profession or vocation in the year of assessment in which it is set up and commenced.
- (2) A claim for relief under the Income Tax Acts in respect of an amount treated as a loss by virtue of subsection (1) above shall be made separately from any claim for relief under those Acts in respect of any other loss.

### Textual Amendments

**F26** 1989 s.114(1) *where trades etc. are commenced after the end of March 1989. Previously “three”.*

### Marginal Citations

**M55** Source—1980 s.39(1), (2), (4); 1982 s.50

## CHAPTER IV

### GROUP RELIEF

### Modifications etc. (not altering text)

**C31** *See—1988 s.434A—limitations on group relief for life assurance company. 1989 s.102—surrender of company tax refund etc. within group (from a day to be appointed not earlier than 31 March 1992).*

## 402 Surrender of relief between members of groups and consortia.

- (1) <sup>M56</sup>Subject to and in accordance with this Chapter and section 492(8), relief for trading losses and other amounts eligible for relief from corporation tax may, in the cases set out in subsections (2) and (3) below, be surrendered by a company (“the surrendering company”) and, on the making of a claim by another company (“the claimant company”) may be allowed to the claimant company by way of a relief from corporation tax called “group relief”.
- (2) Group relief shall be available in a case where the surrendering company and the claimant company are both members of the same group.

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A claim made by virtue of this subsection is referred to as a “group claim”.

- (3) <sup>M57</sup>Group relief shall also be available in the case of a surrendering company and a claimant company either where one of them is a member of a consortium and the other is—
- (a) a trading company which is owned by the consortium and which is not a 75 per cent. subsidiary of any company; or
  - (b) a trading company—
    - (i) which is a 90 per cent. subsidiary of a holding company which is owned by the consortium; and
    - (ii) which is not a 75 per cent. subsidiary of a company other than the holding company; or
  - (c) a holding company which is owned by the consortium and which is not a 75 per cent. subsidiary of any company;

or, in accordance with section 406, where one of them is a member of a group of companies and the other is owned by a consortium and another company is a member of both the group and the consortium.

A claim made by virtue of this subsection is referred to as “a consortium claim”.

- (4) A consortium claim shall not be made <sup>F27</sup> . . . if a profit on a sale of the share capital of the other company or its holding company which the member owns would be treated as a trading receipt of that member.
- (5) <sup>M58</sup>Subject to the provisions of this Chapter, two or more claimant companies may make claims relating to the same surrendering company, and to the same accounting period of that surrendering company.
- (6) A payment for group relief—
- (a) shall not be taken into account in computing profits or losses of either company for corporation tax purposes, and
  - (b) shall not for any of the purposes of the Corporation Tax Acts be regarded as a distribution or a charge on income;

and in this subsection “a payment for group relief” means a payment made by the claimant company to the surrendering company in pursuance of an agreement between them as respects an amount surrendered by way of group relief, being a payment not exceeding that amount.

#### Textual Amendments

**F27** Words in s. 402(4) repealed (retrospectively) by [Finance Act 2000 \(c. 17\)](#), s. 100(3)(a)(5), [Sch. 40 Pt. 2\(11\)](#), Note 2

#### Modifications etc. (not altering text)

**C32** [S. 402\(3\)](#) restricted (27.7.1999) by [Commonwealth Development Corporation Act 1999 \(c. 20\)](#), [Sch. 3 paras. 1, 5\(2\)](#)

#### Marginal Citations

**M56** Source—1970 s.258(1)

**M57** Source—1970 s.258(2); 1981 s.40(2); 1985 Sch.9 5, 6

**M58** Source—1970 s.258(3), (4)

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#### **403 Losses etc. which may be surrendered by way of group relief.**

- (1) <sup>M59</sup>Subject to the provisions of this Chapter, if in any accounting period the surrendering company has incurred a loss, computed as for the purposes of section 393(2), in carrying on a trade, the amount of the loss may be set off for the purposes of corporation tax against the total profits of the claimant company for its corresponding accounting period.
- (2) Subsection (1) above shall not apply to so much of a loss as is excluded from subsection (2) of section 393 by subsection (5) of that section or by section 397.
- (3) <sup>M60</sup>Subject to the provisions of this Chapter, if for any accounting period any capital allowances fall to be made to the surrendering company which—
  - (a) are to be given by discharge or repayment of tax, and
  - (b) are to be available primarily against a specified class of income,so much of the amount of those allowances (exclusive of any carried forward from an earlier period) as exceeds its income of the relevant class arising in that accounting period (before deduction of any losses of any other period or of any capital allowances) may be set off for purposes of corporation tax against the total profits of the claimant company for its corresponding accounting period.
- (4) Subject to the provisions of this Chapter, if for any accounting period the surrendering company (being an investment company) may under subsection (1) of section 75 deduct as expenses of management any amount disbursed for that accounting period, so much of that amount (exclusive of any amount deductible only by virtue of subsection (3) of that section) as exceeds the company's profits of that accounting period may be set off for purposes of corporation tax against the total profits of the claimant company (whether an investment company or not) for its corresponding accounting period.
- (5) The surrendering company's profits of the period shall be determined for the purposes of subsection (4) above without any deduction under section 75 and without regard to any deduction falling to be made in respect of losses or allowances of any other period.
- (6) References in subsections (4) and (5) above to section 75 do not include references to that section as applied by section 76 to companies carrying on life assurance business.
- (7) Subject to the provisions of this Chapter and section 494(4), if in any accounting period the surrendering company has paid any amount by way of charges on income, so much of that amount as exceeds its profits of the period may be set off for the purposes of corporation tax against the total profits of the claimant company for its corresponding accounting period.
- (8) The surrendering company's profits of the period shall be determined for the purposes of subsection (7) above without regard to any deduction falling to be made in respect of losses or allowances of any other period, or to expenses of management deductible only by virtue of section 75(3).
- (9) <sup>M61</sup>In applying any of the preceding subsections in the case of a consortium claim—
  - (a) where the claimant company is a member of a consortium, only a fraction of the loss referred to in subsection (1) above, or of the excess referred to in subsection (3), (4) or (7) above, as the case may be, may be set off under the subsection in question;

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- (b) where the surrendering company is a member of a consortium that loss or excess shall not be set off under the subsection in question against more than a fraction of the total profits of the claimant company;
- and that fraction shall be equal to that member's share in the consortium in the accounting period referred to in section 402(4), subject to any further reduction under section 408(2) and subject also to sections 405(4) and 406(2) and (6).
- (10) <sup>M62</sup>Where a company owned by a consortium—
- (a) has in any relevant accounting period incurred such a loss as is referred to in subsection (1) above, and
- (b) has profits (of whatever description) of that accounting period against which that loss could be set off under section 393(2),
- the amount of that loss which is available to any member of the consortium on a consortium claim shall be determined on the assumption that the company owned by the consortium has made a claim under section 393(2) requiring the loss to be so set off.
- (11) Where the company referred to in subsection (10) above is a group/consortium company, the amount of the loss shall be determined under that subsection before any reduction is made under section 405(1) to (3).

#### **Modifications etc. (not altering text)**

- C33** See—1970(M) ss.41 A/B/C—*determinations of corporation tax in relation to accounting periods ending after the day to be appointed for the purposes of 1988 s.10.1990(C) ss.30-31, 61—circumstances when s.403(3) does not apply to postponed allowances.*
- C34** See 1970(M) ss.41A/B/C—*determinations of corporation tax in relation to accounting periods ending after the day to be appointed for the purposes of 1988 s.10.*

#### **Marginal Citations**

- M59** Source—1970 s.259(1)
- M60** Source—1970 s.259(2)-(7)
- M61** Source—1970 s.259(8); 1981 s.40(3)
- M62** Source—1985 Sch.9 4

VALID FROM 31/07/1998

#### **[<sup>F28</sup>403ZA] amounts eligible for group relief: trading losses.**

- (1) For the purposes of section 403 a trading loss means a loss incurred by the surrendering company in the surrender period in carrying on a trade, computed as for the purposes of section 393A(1).
- (2) That section does not apply to a trading loss which would be excluded from section 393A(1) by—
- (a) section 393A(3) (foreign trades and certain trades not carried on with a view to gain), or
- (b) section 397 (farming and market gardening: restriction on loss relief).
- (3) Where a company owned by a consortium—
- (a) has in any relevant accounting period incurred a trading loss, and

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- (b) has profits (of whatever description) of that accounting period against which that loss could be set off under section 393A(1),  
the amount of the loss available to a member of the consortium on a consortium claim shall be determined on the assumption that the company has made a claim under section 393A(1) requiring the loss to be so set off.
- (4) Where the company mentioned in subsection (3) is a group/consortium company, the amount of the loss available under that subsection shall be determined before any reduction is made under section 405(1) to (3).]

#### Textual Amendments

- F28** Ss. 403-403ZE substituted for s. 403 (with effect in accordance with s. 38(2)(3) of the amending Act) by Finance Act 1998 (c. 36), Sch. 5 para. 29 (with Sch. 5 para. 73)

VALID FROM 31/07/1998

#### [<sup>F28</sup>403ZB] amounts eligible for group relief: excess capital allowances.

- (1) For the purposes of section 403 excess capital allowances means capital allowances falling to be made to the surrendering company for the surrender period which—
- (a) are to be given by discharge or repayment of tax, and
  - (b) are to be available primarily against a specified class of income,
- to the extent to which their amount exceeds the company's income of the relevant class arising in that period.
- (2) In determining the amount of the allowances falling to be made for the surrender period, no account shall be taken of any allowances carried forward from an earlier period.
- (3) The amount of the company's income of the relevant class means its amount before deduction of—
- (a) losses of any other period, or
  - (b) capital allowances.]

#### Textual Amendments

- F28** Ss. 403-403ZE substituted for s. 403 (with effect in accordance with s. 38(2)(3) of the amending Act) by Finance Act 1998 (c. 36), Sch. 5 para. 29 (with Sch. 5 para. 73)

VALID FROM 31/07/1998

#### [<sup>F28</sup>403ZC] amounts eligible for group relief: non-trading deficit on loan relationships.

- (1) For the purposes of section 403 a non-trading deficit on its loan relationships means a deficit of the surrendering company to which section 83 of the <sup>M63</sup>Finance Act 1996 applies.

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- (2) Section 403 applies to such a deficit only to the extent that a claim is duly made under section 83(2) of the Finance Act 1996 for it to be treated as eligible for group relief.]

#### Textual Amendments

**F28** Ss. 403-403ZE substituted for s. 403 (with effect in accordance with s. 38(2)(3) of the amending Act) by Finance Act 1998 (c. 36), Sch. 5 para. 29 (with Sch. 5 para. 73)

#### Marginal Citations

**M63** 1996 c.8.

VALID FROM 31/07/1998

#### <sup>F28</sup> 403ZD Other amounts available by way of group relief.

- (1) References in section 403 to charges on income, Schedule A losses and management expenses shall be construed as follows.
- (2) Charges on income means the aggregate of the amounts paid by the surrendering company in the surrender period by way of charges on income.
- (3) A Schedule A loss means a loss incurred by the surrendering company in the surrender period in a Schedule A business carried on by the company.

It does not include—

- (a) an amount treated as such a loss by section 392A(2) (losses carried forward from earlier period), or
  - (b) a loss which would be excluded from section 392A by subsection (5) of that section (certain businesses not carried on with a view to gain).
- (4) Management expenses means the aggregate of the amounts disbursed by the surrendering company for the surrender period which are deductible under section 75(1) (expenses of management of investment company).

It does not include an amount deductible only by virtue of section 75(3) or 392A(3) (amounts carried forward from earlier periods).

- (5) References in this section to section 75 do not include that section as applied by section 76 to companies carrying on life assurance business.]

#### Textual Amendments

**F28** Ss. 403-403ZE substituted for s. 403 (with effect in accordance with s. 38(2)(3) of the amending Act) by Finance Act 1998 (c. 36), Sch. 5 para. 29 (with Sch. 5 para. 73)



**Status:** Point in time view as at 19/04/1991. This version of this part contains provisions that are not valid for this point in time.  
**Changes to legislation:** Income and Corporation Taxes Act 1988, PART X is up to date with all changes known to be in force on or before 19 June 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)

VALID FROM 31/07/1998

**[<sup>F28</sup>403ZE] Computation of gross profits.**

- (1) For the purposes of section 403 the surrendering company's gross profits of the surrender period means its profits for that period—
  - (a) without any deduction in respect of such losses, allowances and other amounts as are mentioned in paragraph (a) or (b) of subsection (1) of that section, and
  - (b) without any deduction falling to be made—
    - (i) in respect of losses, allowances or other amounts of any other period (whether or not of a description within subsection (1) of that section), or
    - (ii) by virtue of section 75(3) or 392A(3) (other amounts carried forward).
- (2) References in this section to section 75 do not include that section as applied by section 76 to companies carrying on life assurance business.]

**Textual Amendments**

**F28** Ss. 403-403ZE substituted for s. 403 (with effect in accordance with s. 38(2)(3) of the amending Act) by Finance Act 1998 (c. 36), Sch. 5 para. 29 (with Sch. 5 para. 73)

VALID FROM 31/07/1997

**[<sup>F29</sup>403A] Limits on group relief.**

- (1) The amount which, on a claim for group relief, may be set off against the total profits of the claimant company for an accounting period ("the claim period"), and accordingly the amount to which any consent required in respect of that claim may relate, shall not exceed whichever is the smaller of the following amounts—
  - (a) the unused part of the surrenderable amount for the overlapping period; and
  - (b) the unrelieved part of the claimant company's total profits for the overlapping period.
- (2) For the purposes of any claim for group relief—
  - (a) the unused part of the surrenderable amount for the overlapping period is the surrenderable amount for that period reduced by the amount of any prior surrenders attributable to the overlapping period; and
  - (b) the unrelieved part of the claimant company's total profits for the overlapping period is the amount of its total profits for that period reduced by the amount of any previously claimed group relief attributable to the overlapping period.
- (3) For the purposes of any claim for group relief—
  - (a) the surrenderable amount for the overlapping period is so much of the surrenderable amount for the accounting period of the surrendering company

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- to which the claim relates as is attributable, on an apportionment in accordance with section 403B, to the overlapping period;
- (b) the surrenderable amount for an accounting period of the surrendering company is the total amount for that accounting period of the losses and other amounts which (disregarding this section and section 403C) are available in that company's case for set off by way of group relief; and
  - (c) the amount of the claimant company's total profits for the overlapping period is so much of its total profits for the claim period as is attributable, on an apportionment in accordance with section 403B, to the overlapping period.
- (4) In relation to any claim for group relief ("the relevant claim") the amount of the prior surrenders attributable to the period which is the overlapping period in the case of the relevant claim is equal to the aggregate amount (if any) produced by—
- (a) taking the amount of every claim for group relief (whether a group claim or a consortium claim) which—
    - (i) has been made before the relevant claim,
    - (ii) was made in respect of the whole or any part of the amount which, in relation to the relevant claim, is the surrenderable amount for the accounting period of the surrendering company to which the claim relates, and
    - (iii) has not been withdrawn;
  - (b) treating the amount of group relief which (having regard to the provisions of this section) is allowable under each such claim as an amount of relief for the period which is the overlapping period in the case of that claim;
  - (c) determining how much of each amount treated in accordance with paragraph (b) above as an amount of relief for a particular period is attributable, on an apportionment in accordance with section 403B, to the period (if any) which is common to both—
    - (i) that period; and
    - (ii) the period which is the overlapping period in the case of the relevant claim;
- and
- (d) aggregating all the amounts determined under paragraph (c) above in respect of the previously made claims.
- (5) In relation to any claim for group relief ("the relevant claim"), the amount of previously claimed group relief attributable to the period which is the overlapping period in the case of that claim is the aggregate amount produced by—
- (a) taking the amount of every claim for group relief (whether a group claim or a consortium claim) which—
    - (i) has been made before the relevant claim,
    - (ii) was a claim to set off an amount by way of group relief against the claimant company's total profits for the period which, in relation to the relevant claim, is the claim period, and
    - (iii) has not been withdrawn;
  - (b) treating the amount of group relief which (having regard to the provisions of this section) is allowable under each such claim as an amount of relief for the period which is the overlapping period in the case of that claim;
  - (c) determining how much of each amount treated in accordance with paragraph (b) above as an amount of relief for a particular period is

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- attributable, on an apportionment in accordance with section 403B, to the period (if any) which is common to both—
- (i) that period; and
  - (ii) the period which is the overlapping period in the case of the relevant claim;
- and
- (d) aggregating all the amounts determined under paragraph (c) above in respect of the previously made claims.
- (6) For the purposes of this section the amount of group relief allowable on any claim (“the finalised claim”) shall fall to be determined as at the time when that claim ceases to be capable of being withdrawn as if—
- (a) every claim that became incapable of being withdrawn before that time were a claim made before the finalised claim; and
  - (b) every claim that remains capable of being withdrawn at that time were a claim made after the finalised claim.
- (7) Subject to subsection (6) above and without prejudice to any power to withdraw and resubmit claims, where (but for this subsection) more than one claim for group relief would be taken for the purposes of subsections (4) and (5) above to have been made at the same time, those claims shall be deemed, instead, to have been made—
- (a) in such order as the company or companies making them may, by notice to any officer of the Board, elect or, as the case may be, jointly elect; and
  - (b) if there is no such election, in such order as an officer of the Board may direct.
- (8) In this section “the overlapping period”, in relation to a claim for group relief, means (subject to subsection (9) below and section 406(3) and (7)) the period which is common to both—
- (a) the claim period; and
  - (b) the accounting period of the surrendering company to which the claim relates.
- (9) For the purposes of this section any time in the period which, in relation to any claim for group relief, is common to both the accounting periods mentioned in subsection (8) above but which is a time when the qualifying conditions were not satisfied—
- (a) shall be treated as not comprised in the period which is the overlapping period in the case of that claim; and
  - (b) shall be treated instead, in relation to each of those accounting periods, as if it constituted a part of that accounting period which was not common to both periods.
- (10) For the purposes of subsection (9) above the qualifying conditions are satisfied in relation to any claim for group relief at the following times, that is to say—
- (a) if the claim is a group claim, whenever the claimant company and the surrendering company are both members of the same group; and
  - (b) if the claim is a consortium claim, whenever the conditions specified in section 402(3) for the making of that claim are satisfied in the case of the claimant company and the surrendering company.]

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#### Textual Amendments

**F29** Ss. 403A-403C inserted (with effect in accordance with [Sch. 7 para. 9](#) of the amending Act) by [Finance \(No. 2\) Act 1997 \(c. 58\)](#), [Sch. 7 para. 2](#)

#### Modifications etc. (not altering text)

**C35** S. 403A modified by [Taxation of Chargeable Gains Act 1992 \(c. 12\)](#), [s. 179\(4\)](#) (as amended (with effect in accordance with [Sch. 7 para. 9](#) of the 1997 amending Act) by [Finance \(No. 2\) Act 1997 \(c. 58\)](#), [Sch. 7 para. 8](#))

VALID FROM 31/07/1997

#### **[<sup>F29</sup>403B] Apportionments under section 403A.**

- (1) Subject to subsection (2) below, where an apportionment falls to be made under section 403A for the purpose of determining how much of an amount for any period (“the first period”) is attributable to any other period (“the second period”) which comprises the whole or a part of the first period—
  - (a) the whole of that amount shall be attributed to the second period if the first and second periods begin and end at the same times; and
  - (b) in any other case, the apportionment shall be made on a time basis according to how much of the first period coincides with the second period.
- (2) Where the circumstances of a particular case are such that the making on the time basis mentioned in subsection (1)(b) above of some or all of the apportionments to be made in that case would work in a manner that would be unjust or unreasonable in relation to any person, those apportionments shall be made instead (to the extent only that is necessary in order to avoid injustice and unreasonableness) in such other manner as may be just and reasonable.]

#### Textual Amendments

**F29** Ss. 403A-403C inserted (with effect in accordance with [Sch. 7 para. 9](#) of the amending Act) by [Finance \(No. 2\) Act 1997 \(c. 58\)](#), [Sch. 7 para. 2](#)

#### Modifications etc. (not altering text)

**C36** S. 403B modified by [Taxation of Chargeable Gains Act 1992 \(c. 12\)](#), [s. 179\(4\)](#) (as amended (with effect in accordance with [Sch. 7 para. 9](#) of the 1997 amending Act) by [Finance \(No. 2\) Act 1997 \(c. 58\)](#), [Sch. 7 para. 8](#))

VALID FROM 31/07/1997

#### **[<sup>F29</sup>[<sup>F30</sup>403C] Amount of relief in consortium cases.**

- (1) In the case of a consortium claim the amount that may be set off against the total profits of the claimant company is limited by this section.

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- (2) Where the claimant company is a member of the consortium, the amount that may be set off against the total profits of that company for the overlapping period is limited to the relevant fraction of the surrenderable amount.

That fraction is whichever is the lowest in that period of the following percentages—

- (a) the percentage of the ordinary share capital of the surrendering company that is beneficially owned by the claimant company;
- (b) the percentage to which the claimant company is beneficially entitled of any profits available for distribution to equity holders of the surrendering company; and
- (c) the percentage to which the claimant company would be beneficially entitled of any assets of the surrendering company available for distribution to its equity holders on a winding-up.

If any of those percentages have fluctuated in that period, the average percentage over the period shall be taken.

- (3) Where the surrendering company is a member of the consortium, the amount that may be set off against the total profits of the claimant company for the overlapping period is limited to the relevant fraction of the claimant company's total profits for the overlapping period.

That fraction is whichever is the lowest in that period of the following percentages—

- (a) the percentage of the ordinary share capital of the claimant company that is beneficially owned by the surrendering company;
- (b) the percentage to which the surrendering company is beneficially entitled of any profits available for distribution to equity holders of the claimant company; and
- (c) the percentage to which the surrendering company would be beneficially entitled of any assets of the claimant company available for distribution to its equity holders on a winding-up.

If any of those percentages have fluctuated in that period, the average percentage over the period shall be taken.

- (4) In any case where the claimant or surrendering company is a subsidiary of a holding company which is owned by a consortium, for the references in subsection (2) or (3) above to the claimant or surrendering company there shall be substituted references to the holding company.

- (5) Expressions used in this section and in section 403A have the same meanings in this section as in that section.

- (6) Schedule 18 has effect for supplementing this section.]]

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#### Textual Amendments

**F29** Ss. 403A-403C inserted (with effect in accordance with Sch. 7 para. 9 of the amending Act) by Finance (No. 2) Act 1997 (c. 58), Sch. 7 para. 2

**F30** S. 403C substituted (retrospectively) by Finance Act 2000 (c. 17), s. 100(1)(5)

*Status: Point in time view as at 19/04/1991. This version of this part contains provisions that are not valid for this point in time.*

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VALID FROM 28/07/2000

**[<sup>F31</sup>403D] Relief for or in respect of non-resident companies.**

- (1) In determining for the purposes of this Chapter the amounts for any accounting period of the losses and other amounts available for surrender by way of group relief by a non-resident company, no loss or other amount shall be treated as so available except in so far as—
  - (a) it is attributable to activities of that company the income and gains from which for that period are, or (were there any) would be, brought into account in computing the company’s chargeable profits for that period for corporation tax purposes;
  - (b) it is not attributable to activities of the company which are made exempt from corporation tax for that period by any double taxation arrangements; and
  - (c) no part of—
    - (i) the loss or other amount, or
    - (ii) any amount brought into account in computing it,
 corresponds to, or is represented in, any amount which, for the purposes of any foreign tax, is (in any period) deductible from or otherwise allowable against non-UK profits of the company or any other person.
- (2) In determining for the purposes of sections 403A and 403C the total profits for an accounting period of a non-resident company, there shall be disregarded—
  - (a) amounts not falling to be comprised for corporation tax purposes in the chargeable profits of the company for that accounting period, and
  - (b) so far as not falling within paragraph (a) above, any amounts arising from activities which are made exempt from corporation tax for that period by any double taxation arrangements.
- (3) In this section “non-UK profits”, in relation to any person, means amounts which—
  - (a) are taken for the purposes of any foreign tax to be the amount of the profits, income or gains on which (after allowing for deductions) that person is charged with that tax, and
  - (b) are not amounts corresponding to, and are not represented in, the total profits (of that or any other person) for any accounting period,
 or amounts taken into account in computing such amounts.
- (4) Subsection (2) above applies for the purposes of subsection (3)(b) above as it applies for the purposes of sections 403A and 403C.
- (5) For the purposes of this section an amount shall not be taken to be an amount which for the purposes of any foreign tax is deductible from or otherwise allowable against any non-UK profits of any person by reason only that it is—
  - (a) an amount of profits brought into account for the purpose of being excluded from the profits that are non-UK profits of that person by reference to that foreign tax; or
  - (b) an amount brought into account in computing the amount of any profits falling to be so excluded.
- (6) So much of the law of any territory outside the United Kingdom as for the purposes of any foreign tax makes the deductibility of any amount dependent on whether or

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not it is deductible for tax purposes in the United Kingdom shall be disregarded for the purposes of this section.

- (7) For the purposes of this section activities of a company are made exempt from corporation tax for any period by double taxation arrangements if the effect of any such arrangements is that the income and gains (if any) arising for that period from those activities is to be disregarded in computing the company's chargeable profits.
- (8) In this section "double taxation arrangements" means any arrangements having effect by virtue of section 788.
- (9) In this section "foreign tax" means any tax chargeable under the law of any territory outside the United Kingdom which—
- (a) is charged on income and corresponds to United Kingdom income tax; or
  - (b) is charged on income or chargeable gains or both and corresponds to United Kingdom corporation tax;
- but for the purposes of this section a tax shall not be treated as failing to correspond to income tax or corporation tax by reason only that it is chargeable under the law of a province, state or other part of a country, or is levied by or on behalf of a municipality or other local body.
- (10) In determining for the purposes of this section whether any activities are made exempt from corporation tax for any period by any double taxation arrangements any requirement that a claim is made before effect is given to any provision of the arrangements shall be disregarded.]

#### Textual Amendments

**F31** Ss. 403D, 403E inserted (with effect in accordance with Sch. 27 para. 6(1)(2)(4) of the amending Act) by Finance Act 2000 (c. 17), Sch. 27 para. 4

VALID FROM 28/07/2000

#### **[<sup>F31</sup> 403E Relief for overseas losses of UK resident companies.**

- (1) In determining, for the purposes of this Chapter, the amounts for any accounting period of the losses and other amounts available for surrender by way of group relief by any company resident in the United Kingdom ("the resident company"), a loss or other amount shall be treated as not so available in so far as it—
- (a) is attributable to an overseas branch or agency of that company, and
  - (b) is a loss or other amount falling within subsection (2) below.
- (2) Subject to subsection (3) below, a loss or other amount attributable to an overseas branch or agency falls within this subsection if the whole or any part of it is, or represents, an amount which, for the purposes of foreign tax under the law of the territory where that branch or agency is situated, is (in any period) deductible from or otherwise allowable against non-UK profits of a person other than the resident company.

*Status: Point in time view as at 19/04/1991. This version of this part contains provisions that are not valid for this point in time.*

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- (3) A loss or other amount does not fall within subsection (2) above if it is referable to life assurance business (within the meaning of Chapter I of Part XII) carried on by the resident company.
- (4) The reference in subsections (1) and (2) above to a loss or other amount attributable to an overseas branch or agency of a company is a reference to the loss or other amount (if any) that would be surrenderable by that company by way of group relief if the amount surrenderable by that company were computed—
  - (a) by reference only to that branch or agency, and
  - (b) by the application in relation to that branch or agency of principles corresponding in all material respects to those applicable for the purposes of corporation tax to the computation of the equivalent losses or other amounts in the case of the UK branch or agency of a non-resident company.
- (5) In subsection (4)(b) above the reference to the UK branch or agency of a non-resident company is a reference to any branch or agency through which a company which is not resident in the United Kingdom carries on a trade in the United Kingdom.
- (6) References in this section to an overseas branch or agency of a company are references to any branch or agency through which that company carries on a trade in a territory outside the United Kingdom.
- (7) In this section “foreign tax” and “non-UK profits” have the same meaning as in section 403D.
- (8) Where the deductibility of any amount for the purposes of any foreign tax is dependent on whether or not that amount, or a corresponding amount, is deductible for tax purposes in the United Kingdom, this section shall have effect as if that amount were deductible for the purposes of that foreign tax if, and only if, the resident company is treated for the purposes of that tax as resident in the territory where that tax is charged.]

#### Textual Amendments

**F31** Ss. 403D, 403E inserted (with effect in accordance with Sch. 27 para. 6(1)(2)(4) of the amending Act) by Finance Act 2000 (c. 17), Sch. 27 para. 4

VALID FROM 19/07/2006

#### **[<sup>F32</sup>403F Relief in respect of overseas losses of non-resident companies**

- (1) This section has effect for determining for the purposes of this Chapter the extent to which a loss or other amount is available for surrender by way of group relief by a non-resident company—
  - (a) which is resident in an EEA territory, or
  - (b) which is not so resident but which carries on a trade in an EEA territory through a permanent establishment,
 in a case where a group claim may be made as a result of the condition in section 402(2A) being satisfied.



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- (2) A loss or other amount is not available for surrender by way of group relief by the non-resident company except in so far as, in relation to the EEA territory, the amount meets—
  - (a) the equivalence condition,
  - (b) the EEA tax loss condition,
  - (c) the qualifying loss condition, and
  - (d) the precedence condition.
- (3) Part 1 of Schedule 18A determines, in the case of any amount and any EEA territory, the extent to which those conditions are met.
- (4) In so far as a loss or other amount meets those conditions, Part 2 of Schedule 18A applies—
  - (a) for calculating the amount of the loss or other amount (if any) that is available for surrender by way of group relief, and
  - (b) otherwise for making provision in relation to the application of this Chapter to the non-resident company.
- (5) This section is subject to section 403G (unallowable overseas losses of non-resident companies).]

#### Textual Amendments

- F32** S. 403F inserted (with effect in accordance with Sch. 1 para. 9 of the amending Act) by Finance Act 2006 (c. 25), Sch. 1 para. 4(1)

VALID FROM 19/07/2006

#### <sup>F33</sup> 403G Unallowable overseas losses of non-resident companies

- (1) This section applies in the case of a loss or other amount arising to a non-resident company—
  - (a) which is resident in any EEA territory, or
  - (b) which is not so resident but which carries on a trade in an EEA territory through a permanent establishment,where the amount is not attributable for corporation tax purposes to any UK permanent establishment of the non-resident company.
- (2) The amount is not available for surrender by way of group relief by the non-resident company in so far as conditions A and B are met.
- (3) Condition A is that—
  - (a) the amount would not qualify for group relief but for any relevant arrangements, or
  - (b) the amount would not have arisen to the non-resident company but for any relevant arrangements.
- (4) Condition B is that the main purpose, or one of the main purposes, of the relevant arrangements was to secure that the amount would qualify for group relief.

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- (5) In this section references to relevant arrangements, in relation to any amount, are to—
- (a) arrangements made on or after 20th February 2006, or
  - (b) arrangements made before that date where the amount would (but for this section) first qualify for group relief on or after that date or (as the case may be) the amount arises on or after that date.
- (6) In this section—
- “arrangements” includes any agreement, understanding, scheme, transaction or series of transactions (whether or not legally enforceable),
- “UK permanent establishment”, in relation to the non-resident company, means any permanent establishment through which it carries on a trade in the United Kingdom.]

#### Textual Amendments

**F33** S. 403G inserted (with effect in accordance with Sch. 1 para. 9 of the amending Act) by Finance Act 2006 (c. 25), Sch. 1 para. 4(2)

#### 404 Limitation of group relief in relation to certain dual resident companies.

- (1) <sup>M64</sup>Notwithstanding any other provision of this Chapter, no loss or other amount shall be available for set off by way of group relief in accordance with section 403 if, in the material accounting period of the company which would otherwise be the surrendering company, that company is for the purposes of this section a dual resident investing company.
- (2) In this section “the material accounting period” means, according to the kind of group relief which would be appropriate, the accounting period—
- (a) in which the loss is incurred; or
  - (b) for which the capital allowances fall to be made; or
  - (c) for which the expenses of management are disbursed; or
  - (d) for which the amount is paid by way of charges on income;
- but subsection (1) above does not have effect unless the material accounting period begins on or after 1st April 1987.
- (3) In Schedule 17—
- (a) Part I has effect where an accounting period of a company in which it is a dual resident investing company begins before and ends on or after 1st April 1987 and references in subsections (1) and (2) above to the material accounting period shall be construed accordingly; and
  - (b) Part II has effect with respect to the time at which certain interest and other payments are to be treated as paid.
- (4) A company is for the purposes of this section a dual resident company in any accounting period in which—
- (a) it is resident in the United Kingdom; and
  - (b) it is also within a charge to tax under the laws of a territory outside the United Kingdom—
    - (i) because it derives its status as a company from those laws; or

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- (ii) because its place of management is in that territory; or
  - (iii) because under those laws it is for any other reason regarded as resident in that territory for the purposes of that charge.
- (5) In any accounting period throughout which it is not a trading company, a dual resident company is for the purposes of this section an investing company.
- (6) In any accounting period of a dual resident company in which it is a trading company, the company is nevertheless for the purposes of this section an investing company if—
  - (a) in that period it carries on a trade of such a description that its main function or one of its main functions consists of all or any of the following, namely—
    - (i) acquiring and holding, directly or indirectly, shares, securities or investments of any other description, including interests in companies (resident outside, as well as in, the United Kingdom) with which the dual resident company is connected, within the terms of section 839;
    - (ii) making payments which, by virtue of any enactment, are charges on income for the purposes of corporation tax;
    - (iii) making payments (of interest or other sums) which are similar to those referred to in sub-paragraph (ii) above but which are deductible in computing the profits of the company for the purposes of corporation tax;
    - (iv) obtaining funds (by borrowing or in any other manner whatsoever) for the purpose of, or otherwise in connection with, any of the activities referred to in sub-paragraphs (i) to (iii) above; or
  - (b) it does not fall within paragraph (a) above, but in that accounting period it carries on all or any of the activities referred to in sub-paragraphs (i) to (iv) of that paragraph and does so—
    - (i) to an extent which does not appear to be justified by any trade which it does carry on; or
    - (ii) for a purpose which does not appear to be appropriate to any such trade; or
  - (c) in that period—
    - (i) the amount paid by the company by way of charges on income exceeds its profits of the period, determined as mentioned in section 403(8); and
    - (ii) those charges include an amount which falls to be treated as a charge on income by virtue of section 78(2) or paragraph 5(2) of Schedule 4; and
    - (iii) the paying of those charges by the company is its main activity or one of its main activities.

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**Modifications etc. (not altering text)**

**C37** Definition applied for purposes of—1970 s.273A—transfer of U.K. branch or agency. 1970 s.276(1A)  
—replacement of business assets by members of a group. 1990(C) s.161(2)—interpretation.

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**Marginal Citations**

**M64** Source—1987 (No.2) s.63

*Status: Point in time view as at 19/04/1991. This version of this part contains provisions that are not valid for this point in time.*

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#### **405 Claims relating to losses etc. of members of both group and consortium.**

- (1) <sup>M65</sup>For the purposes of a consortium claim in respect of the loss or other amount of any relevant accounting period of a group/consortium company, that loss or other amount shall be treated as reduced (or, as the case may be, extinguished) by first deducting therefrom the potential relief attributable to group claims.
- (2) Subject to subsection (3) below, in relation to the loss or other amount of a relevant accounting period of a group/consortium company, the potential relief attributable to group claims is the aggregate amount of group relief that would be claimed if every company which, as a member of the same group of companies as the group/consortium company, could make a group claim in respect of that loss or other amount made such a claim for an amount which, when set against the claimant company's total profits for its corresponding accounting period, would equal those profits.
- (3) Where for any accounting period another member of the group of companies of which the group/consortium company is a member has a loss or other amount available for relief and one or more group claims is or are in fact made in respect of that loss or other amount, account shall be taken of the relief so claimed before determining (in relation to the loss or other amount of the group/consortium company) the potential relief attributable to group claims under subsection (2) above.
- (4) <sup>M66</sup>In any case where—
  - (a) a consortium claim is made by a group/consortium company in respect of a loss or other amount of an accounting period of a member of the consortium, and
  - (b) the corresponding accounting period of the group/consortium company is a relevant accounting period,
 the total profits of the corresponding accounting period of the group/consortium company against a fraction of which that loss or other amount may be set off (in accordance with section 403(9)(b)) shall be treated as reduced (or as the case may be extinguished) by deducting therefrom the potential relief available to the group/consortium company by way of group claims.
- (5) Subject to subsection (6) below, in relation to a relevant accounting period of a group/consortium company, the potential relief available to the company by way of group claims is the maximum amount of group relief that could be claimed by the company for that accounting period on group claims relating to the losses or other amounts available for relief of other members of the group of companies of which the group/consortium company is a member.
- (6) Where another member of the group of companies of which the group/consortium company is a member in fact makes one or more group claims in respect of losses or other amounts of other members of the group, account shall be taken of the relief already claimed by that company in determining the potential relief available to the group/consortium company by way of group claims under subsection (5) above.

#### **Marginal Citations**

**M65** Source—1985 Sch.9 2

**M66** Source—1985 Sch.9 3

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#### **406 Claims relating to losses etc. of consortium company or group member.**

- (1) <sup>M67</sup>In this section—
  - (a) “link company” means a company which is a member of a consortium and is also a member of a group of companies; and
  - (b) “consortium company”, in relation to a link company, means a company owned by the consortium of which the link company is a member; and
  - (c) “group member”, in relation to a link company, means a company which is a member of the group of which the link company is also a member but is not itself a member of the consortium of which the link company is a member.
- (2) <sup>M68</sup>Subject to subsections (3) and (4) below, where the link company could (disregarding any deficiency of profits) make a consortium claim in respect of the loss or other amount eligible for relief of a relevant accounting period of a consortium company, a group member may make any consortium claim which could be made by the link company; and the fraction which is appropriate under section 403(9) where a group member is the claimant company shall be the same as that which would be appropriate if the link company were the claimant company.
- (3) A group member may not, by virtue of subsection (2) above, make a consortium claim in respect of the loss or other amount of any accounting period of a consortium company unless the claimant company was a member of the group concerned throughout the whole of the accounting period or, as the case may be, each accounting period of the link company which, if that company were making the claim, would be a corresponding accounting period in relation to that accounting period of the consortium company.
- (4) The maximum amount of relief which, in the aggregate, may be claimed by group members and the link company by consortium claims relating to the loss or other amount of a relevant accounting period of a consortium company shall not exceed the relief which could have been claimed by the link company (disregarding any deficiency of profits) if subsections (2) and (3) above had not been enacted.
- (5) <sup>M69</sup>Subject to subsections (6) to (8) below, where a group member has for a relevant accounting period a loss or other amount available for relief, a consortium company may make any claim in respect of that loss or other amount which it could make if the group member were a member of the consortium at all times when the link company was such a member, but not at any other time.
- (6) The fraction which is appropriate under section 403(9) in relation to a consortium claim made by virtue of subsection (5) above shall be the same as that which would be appropriate if the link company were the surrendering company, except that the [<sup>F34</sup>overlapping period in respect of which the relevant fraction] is to be ascertained shall be that of the group member which is in fact the surrendering company.
- (7) A consortium company may not, by virtue of subsection (5) above, make a consortium claim in respect of the loss or other amount of any accounting period of a group member unless the group member was a member of the group in question throughout the whole of that accounting period.
- (8) For any accounting period of a consortium company (“the claimant company’s accounting period”) the maximum amount of relief which, in the aggregate, may be claimed by that company by consortium claims relating to the losses or other amounts of accounting periods of the link company and group members shall not exceed that fraction of the total profits of the claimant company’s accounting period which would

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be brought into account under section 403(9)(b) on a consortium claim in respect of which—

- (a) the link company was the surrendering company; and
- (b) the link company’s accounting period was the same as the claimant company’s accounting period.

#### Textual Amendments

**F34** Words in s. 406(6) substituted (retrospectively) by [Finance Act 2000 \(c. 17\), s. 100\(2\)\(5\)](#)

#### Marginal Citations

**M67** Source—1985 Sch.9 5(1), 6(1)

**M68** Source—1985 Sch.9 5(2)-(4)

**M69** Source—1985 Sch.9 6(2)-(5)

### 407 Relationship between group relief and other relief.

- (1) <sup>M70</sup>Group relief for an accounting period shall be allowed as a deduction against the claimant company’s total profits for the period—
  - (a) before reduction by any relief derived from a subsequent accounting period, but
  - (b) <sup>M71</sup>as reduced by any other relief from tax (including relief in respect of charges on income under section 338(1)) determined on the assumption that the company makes all relevant claims under section 393(2) of this Act and [<sup>F35</sup>section 145(3) of the 1990 Act] (set-off of capital allowances against total profits).
- (2) For the purposes of this section “relief derived from a subsequent accounting period” means—
  - (a) <sup>M72</sup>relief under section 393(2) or 394 in respect of a loss incurred in an accounting period after the accounting period the profits of which are being computed; and
  - (b) <sup>M73</sup>relief under [<sup>F35</sup>section 145(3) of the 1990 Act] in respect of capital allowances falling to be made for an accounting period after the accounting period the profits of which are being computed.
- (3) <sup>M74</sup>The reductions to be made in total profits of an accounting period against which any relief derived from a subsequent accounting period is to be set off shall include any group relief for that first-mentioned accounting period.

#### Textual Amendments

**F35** 1990(C) s.164 and Sch.1 para.8(20). *Previously*  
 “section 74(3) of the 1968 Act”  
*in both places.*

#### Marginal Citations

**M70** Source—1970 s.260(1)

**M71** Source—1970 s.260(1), (2)

**M72** Source—1970 s.260(3)(a), (d)

**M73** Source—1970 s.260(3)(b)

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**M74** Source—1970 s.260(4)

#### 408 Corresponding accounting periods.

- (1) <sup>M75</sup>For the purposes of group relief an accounting period of the claimant company which falls wholly or partly within an accounting period of the surrendering company corresponds to that accounting period.
- (2) If an accounting period of the surrendering company and a corresponding accounting period of the claimant company do not coincide—
  - (a) the amount which may be set off against the total profits of the claimant company for the corresponding accounting period shall be reduced by applying the fraction—

$$\frac{A}{B}$$

(if that fraction is less than unity); and

- (b) the total profits of the claimant company for the corresponding accounting period shall be reduced by applying the fraction—

$$\frac{A}{C}$$

(if that fraction is less than unity);

where—

A is the length of the period common to the two accounting periods;

B is the length of the accounting period of the surrendering company;

C is the length of the corresponding accounting period of the claimant company.

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#### Marginal Citations

**M75** Source—1970 s.261

#### 409 Companies joining or leaving group or consortium.

- (1) <sup>M76</sup>Subject to the following provisions of this section, group relief shall be given if, and only if, the surrendering company and the claimant company are members of the same group, or fulfil the conditions for relief for a consortium, throughout the whole of the surrendering company's accounting period to which the claim relates, and throughout the whole of the corresponding accounting period of the claimant company.
- (2) Where on any occasion two companies become or cease to be members of the same group, then, for the purposes specified in subsection (3) below, it shall be assumed as respects each company that—
  - (a) on that occasion (unless a true accounting period of the company begins or ends then) an accounting period of the company ends and a new one begins,

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- the new accounting period to end with the end of the true accounting period (unless before then there is a further break under this subsection); and
- (b) the losses or other amounts of the true accounting period are apportioned to the component accounting periods; and
- (c) the amount of total profits for the true accounting period of the company against which group relief may be allowed in accordance with section 407(1) is also apportioned to the component accounting periods;
- and an apportionment under this subsection shall be on a time basis according to the respective lengths of the component accounting periods except that, if it appears that that method would work unreasonably or unjustly, such other method shall be used as appears just and reasonable.
- (3) Where the one company is the surrendering company and the other company is the claimant company—
- (a) references in section 403 to accounting periods, to profits, and to losses, allowances, expenses of management or charges on income of the surrendering company shall be construed in accordance with subsection (2) above;
- (b) references in subsection (1) above and section 408 to accounting periods shall be so construed (so that if the two companies are members of the same group in the surrendering company’s accounting period, they must under that section also be members of the same group in any corresponding accounting period of the claimant company);
- (c) references in section 408 to profits, and amounts to be set off against the profits, shall be so construed (so that an amount apportioned under subsection (2) above to a component accounting period may fall to be reduced under subsection (2) of that section).
- (4) Subsections (2) and (3) above shall apply with the necessary modifications where a company begins or ceases to fulfil the conditions for relief for a consortium, either as a surrendering company or as a claimant company, as it applies where two companies become or cease to be members of the same group except that, in a case where—
- (a) the surrendering company is owned by a consortium and two or more members of the consortium claim relief in respect of losses or other amounts of the surrendering company, or
- (b) the claimant company is owned by a consortium and claims relief in respect of losses or other amounts of two or more members of the consortium,
- the basis of apportionment which is adopted under subsection (2) above in relation to the losses or other amounts or, as the case may be, the total profits of the true accounting period of the company owned by the consortium shall be the same on each of the claims.
- (5) <sup>M77</sup>In subsection (6) below—
- “the primary claim” means a consortium claim made in respect of the loss or other amount of a relevant accounting period of a company owned by a consortium;
- “the principal surrendering company” means that company; and
- “the principal accounting period” means that accounting period.
- (6) In any case where—
- (a) the company making the primary claim or, if that claim is made by virtue of section 406(2), the company which is the link company for the purposes of



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that subsection was not a member of the consortium throughout the whole of the principal accounting period; and

- (b) on or after the date on which the primary claim is made, a consortium claim is made which—
  - (i) is in respect of the loss or other amount of an accounting period of a surrendering company (being a company owned by the consortium referred to in paragraph (a) above, other than the principal surrendering company); and
  - (ii) is made by the company making the primary claim or, in a case where it or the primary claim is made by virtue of section 406(2), is made by any member of the group in question other than the company making the primary claim; and the accounting period to which the claim relates falls, in whole or in part, within the principal accounting period; and
- (c) at any time during the principal accounting period the surrendering company is a member of the same group of companies as the principal surrendering company;

no relief shall be allowed on the primary claim, or, as the case may be, any relief which was so allowed shall be withdrawn.

(7) In any case where—

- (a) <sup>M78</sup>a company (“the principal claimant company”) owned by a consortium makes a consortium claim (“the principal claim”) in respect of the loss or other amount of an accounting period of a member of the consortium or, if the principal claim is made by virtue of section 406(5), of a company which, in relation to that member of the consortium, is a group member, within the meaning of that section; and
- (b) the member of the consortium concerned (whether as the surrendering company or the link company, within the meaning of section 406) was not a member of the consortium throughout the whole of that accounting period; and
- (c) on or after the date on which the principal claim is made, a consortium claim is made—
  - (i) by a company, other than the principal claimant company, which is owned by the consortium and which is a member of the same group of companies as the principal claimant company; and
  - (ii) which relates to the loss or other amount of an accounting period of the consortium member referred to in paragraph (b) above or of a company which in relation to that consortium member is a group member, within the meaning of section 406;

and that accounting period falls, in whole or in part, in the accounting period referred to in paragraph (a) above; no relief shall be allowed on the principal claim or, as the case may be, any relief which was so allowed shall be withdrawn.

- (8) <sup>M79</sup>Where any relief which has been allowed is withdrawn by virtue of subsection (6) or (7) above, all such adjustments shall be made, whether by way of assessment or otherwise, as may be necessary in consequence of that withdrawal.

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#### **Modifications etc. (not altering text)**

- C38** S. 409(2) modified (6.3.1992 with effect as mentioned in ss. 180(1)(b) and 289(1)(2) of the amending Act and S.I. 1992/3066, **art. 2(2)(d)**) by Taxation of Chargeable Gains Act 1992 (c. 12), **ss. 179(4)(a), 289** (with ss. 60, 101(1), 171, 201(3)).
- S. 409(2) modified (27.7.1993 with effect as mentioned in s. 89(2) of the amending Act) by 1993 c. 34, **s. 89(1)(2)**

#### **Marginal Citations**

- M76** Source—1970 s.262; 1984 s.47(1)
- M77** Source—1985, Sch.9 7(1), (2)
- M78** Source—1985 Sch.9 8(1), (2)
- M79** Source—1985 Sch.9 7(3), 8(3)

### **410 Arrangements for transfer of company to another group or consortium.**

- (1) <sup>M80</sup>If, apart from this section, two companies (“the first company” and “the second company”) would be treated as members of the same group of companies and—
- (a) in an accounting period one of the two companies has trading losses or other amounts eligible for relief from corporation tax which it would, apart from this section, be entitled to surrender by way of group relief; and
  - (b) arrangements are in existence by virtue of which, at some time during or after the expiry of that accounting period—
    - (i) the first company or any successor of it could cease to be a member of the same group of companies as the second company and could become a member of the same group of companies as a third company; or
    - (ii) any person has or could obtain, or any persons together have or could obtain, control of the first company but not of the second; or
    - (iii) a third company could begin to carry on the whole or any part of a trade which, at any time in that accounting period, is carried on by the first company and could do so either as a successor of the first company or as a successor of another company which is not a third company but which, at some time during or after the expiry of that accounting period, has begun to carry on the whole or any part of that trade;

then, for the purposes of this Chapter, the first company shall be treated as not being a member of the same group of companies as the second company.
- (2) If a trading company is owned by a consortium or is a 90 per cent. subsidiary of a holding company which is owned by a consortium and—
- (a) in any accounting period the trading company or a member of the consortium has trading losses or other amounts eligible for relief from corporation tax which it would, apart from this section, be entitled to surrender by way of group relief; and
  - (b) arrangements are in existence by virtue of which—
    - (i) the trading company or any successor of it could, at some time during or after the expiry of that accounting period, become a 75 per cent. subsidiary of a third company; or

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- (ii) any person who owns, or any persons who together own, less than 50 per cent. of the ordinary share capital of the trading company has or together have, or could at some time during or after the expiry of that accounting period obtain, control of the trading company; or
- (iii) any person, other than a holding company of which the trading company is a 90 per cent. subsidiary, either alone or together with connected persons, holds or could obtain, or controls or could control the exercise of not less than 75 per cent. of the votes which may be cast on a poll taken at a general meeting of that trading company in that accounting period or in any subsequent accounting period; or
- (iv) a third company could begin to carry on, at some time during or after the expiry of that accounting period, the whole or any part of a trade which, at any time in that accounting period, is carried on by the trading company and could do so either as a successor of the trading company or as a successor of another company which is not a third company but which, at some time during or after the expiry of that accounting period, has begun to carry on the whole or any part of that trade;

then, for the purposes of this Chapter, the trading company shall be treated as though it did not (as the surrendering company or the claimant company) fall within section 402(3).

- (3) In any case where a trading company is a 90 per cent. subsidiary of a holding company which is owned by a consortium, any reference in subsection (2) above to the trading company, other than a reference in paragraph (b)(iv), shall be construed as including a reference to the holding company.
- (4) In this section “third company” means a company which, apart from any provision made by or under any such arrangements as are specified in paragraph (b) of either subsection (1) or subsection (2) above, is not a member of the same group of companies as the first company or, as the case may be, the trading company or the holding company to which subsection (2) above applies.
- (5) In subsections (1) and (2) above—
  - “arrangements” means arrangements of any kind whether in writing or not;
  - “connected persons” shall be construed in accordance with section 839; and
  - “control” has the meaning assigned by section 840.
- (6) For the purposes of subsections (1) and (2) above a company is the successor of another if it carries on a trade which, in whole or in part, the other company has ceased to carry on and the circumstances are such that—
  - (a) section 343 applies in relation to the two companies as the predecessor and the successor within the meaning of that section; or
  - (b) the two companies are connected with each other within the meaning of section 839.
- (7) <sup>M81</sup>Where by virtue of any enactment a Minister of the Crown or Northern Ireland department has power to give directions to a statutory body as to the disposal of assets belonging to, or to a subsidiary of, that body, the existence of that power shall not be regarded as constituting or as having at any time constituted an arrangement within the meaning of this section.

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#### **Modifications etc. (not altering text)**

- C39** S. 410(1)(2) restricted (24.7.1996) by **Broadcasting Act 1996 (c. 55)**, s. 149(1)(f), **Sch. 7 para. 20(1)** (with s. 43(6))
- C40** S. 410 restricted (19.7.1995) by **Crown Agents Act 1995 (c. 24)** s. 7(2)
- C41** S. 410 restricted (19.9.1994) by **Coal Industry Act 1994 (c. 21)**, s. 68(4), **Sch. 4 para. 16** (with s. 40(7)); S.I. 1994/2189, art. 2, **Sch.**
- C42** S. 410 restricted (retrospective to 5.11.1993) by **Finance Act 1994 (c. 9)**, s. 252(2), **Sch. 24 para. 17**
- C43** S. 410(1)(2) restricted (8.11.1995) by **Atomic Energy Authority Act 1995 (c. 37)**, **Sch. 3 para. 8(1)**
- C44** See **Trustee Savings Bank Act 1985 s.5** and **Sch.2 para.6(8)**—s.410 *not to apply to transfers effected by s.3 of the TSB Act 1985.*

#### **Marginal Citations**

- M80** Source—1973 s.29, 32(6); 1981 s.40(6)
- M81** Source—1981 s.47

### **411 Exclusion of double allowances.**

- (1) <sup>M82</sup>Relief shall not be given more than once in respect of the same amount, whether by giving group relief and by giving some other relief (in any accounting period) to the surrendering company, or by giving group relief more than once.
- (2) In accordance with subsection (1) above, two or more claimant companies cannot, in respect of any one loss or other amount for which group relief may be given, and whatever their accounting periods corresponding to that of the surrendering company, obtain in all more relief than could be obtained by a single claimant company whose corresponding accounting period coincided with the accounting period of the surrendering company.
- (3) <sup>M83</sup>Subject to subsections (4) and (5) below, if claims for group relief relating to the same accounting period of the same surrendering company are made by two or more claimant companies which themselves are members of a group of companies, and—
  - (a) all the claims so made are admissible only by virtue of subsection (2) and (3) of section 409, and
  - (b) there is a part of the surrendering company's accounting period during which none of those claimant companies is a member of the same group as the surrendering company,
 those claimant companies shall not obtain in all more relief than could be obtained by a single claimant company which was not a member of the same group as the surrendering company during that part of the surrendering company's accounting period (but was a member during the remainder of that accounting period).
- (4) <sup>M84</sup>If companies which are members of different groups make claims falling within subsection (3) above, that subsection shall apply separately in relation to the companies in each group.
- (5) For the purposes of subsection (3) above, there shall be left out of account a claim made by a company if—
  - (a) the claimant company joins or leaves a group of companies at the same time as the surrendering company; and
  - (b) both before and after that time either the claimant company is a 75 per cent. subsidiary of the surrendering company or the surrendering company is a 75

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per cent. subsidiary of the claimant company or both companies are 75 per cent. subsidiaries of another company.

- (6) <sup>M85</sup>Subject to subsection (7) below, if claims as respects two or more surrendering companies which themselves are members of a group of companies are made by a claimant company for group relief to be set off against its total profits for any one accounting period, and—
- (a) all the claims so made are admissible only by virtue of subsections (2) and (3) of section 409, and
  - (b) there is a part of the claimant company’s accounting period during which none of the surrendering companies by reference to which the claims are made is a member of the same group as the claimant company,
- the claimant company shall not obtain in all more relief to be set off against its profits for the accounting period than it could obtain on a claim as respects a single surrendering company (with unlimited losses and other amounts eligible for relief) which was not a member of the same group as the claimant company during that part of the claimant company’s accounting period (but was a member during the remainder of that accounting period).
- (7) <sup>M86</sup>If claims falling within subsection (6) above are made as respects surrendering companies which are members of different groups, that subsection shall apply separately in relation to claims as respects the surrendering companies in each group.
- (8) For the purposes of subsection (6) above there shall be left out of account a claim made as respects a surrendering company if—
- (a) the surrendering company joins or leaves the group of companies concerned at the same time as the claimant company; and
  - (b) both before and after that time either the surrendering company is a 75 per cent. subsidiary of the claimant company or the claimant company is a 75 per cent. subsidiary of the surrendering company or both companies are 75 per cent. subsidiaries of another company.
- (9) <sup>M87</sup>References in subsections (3) to (6) above to claims for group relief do not include references to consortium claims.
- (10) <sup>M88</sup>Without prejudice to the provisions of [<sup>F36</sup>section 161(5) of the 1990 Act], any reference in [<sup>F36</sup>that Act, except parts III and VII,] to an allowance made includes a reference to an allowance which would be made but for the granting of group relief, or but for that and but for an insufficiency of profits or other income against which to make it.

#### Textual Amendments

- F36** 1990(C) s.164 and Sch.1 para.8(21). *Previously*  
“section 87(3) of the 1968 Act”  
*and*  
“Part I of that Act”  
*respectively.*

#### Marginal Citations

- M82** Source—1970 s.263(1),(2)  
**M83** Source—1970 s.263(3); 1985 Sch.9 9  
**M84** Source—1970 s.263(3A), (3B); 1985 Sch.9 10

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- M85** Source—1970 s.263(4); 1985 Sch.9 11  
**M86** Source—1970 s.263(4A)(4B); 1985 Sch.9 12  
**M87** Source—1970 s.263(5); 1985 Sch.9 13  
**M88** Source—1970 s.263(6)

VALID FROM 01/04/2009

**[<sup>F37</sup>411Z] No relief where deduction of relevant return under alternative finance arrangements disallowed**

- (1) This section applies if the surrendering company is prevented from obtaining a deduction in respect of an amount by section 520 of CTA 2009 (provision not at arm's length: non-deductibility of relevant return).
- (2) The amount may not be surrendered by way of group relief.]

**Textual Amendments**

- F37** S. 411ZA 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. 124 (with Sch. 2 Pts. 1, 2)

**Modifications etc. (not altering text)**

- C45** S. 411ZA: power to amend conferred (1.4.2009 with effect in accordance with s. 1329(1) of the affecting Act) by Corporation Tax Act 2009 (c. 4), s. 521 (with Sch. 2 Pts. 1, 2, paras. 73-75)

**[<sup>F38</sup>411A] Group relief by way of substitution for loss relief.**

- (1) Group relief may be given in respect of a loss notwithstanding that relief has been given in respect of it under section 393(1).
- (2) Where group relief in respect of a loss is given by virtue of subsection (1) above, all such assessments or adjustments of assessments shall be made as may be necessary to withdraw the relief in respect of the loss given under section 393(1).
- (3) An assessment under subsection (2) above shall not be out of time if it is made within one year from the date on which the surrendering company gave the inspector notice of consent to surrender relating to the loss.
- (4) For the purposes of this section relief under section 393(1) shall be treated as given for losses incurred in earlier accounting periods before losses incurred in later accounting periods.]

**Textual Amendments**

- F38** S. 411A inserted (with effect in accordance with s. 101(2) of the amending Act) by Finance Act 1990 (c. 29), s. 101(1)

**412 Claims and adjustments.**

- (1) <sup>M89</sup>A claim for group relief—

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- (a) need not be for the full amount available,
  - (b) shall require the consent of the surrendering company notified to the inspector in such form as the Board may require,
  - (c) must be made within two years from the end of the surrendering company's accounting period to which the claim relates.
- (2) A consortium claim shall require the consent of each member of the consortium, notified to the inspector in such form as the Board may require, in addition to the consent of the surrendering company.
- (3) If the inspector discovers that any group relief which has been given is or has become excessive he may make an assessment to corporation tax under Case VI of Schedule D in the amount which ought in his opinion to be charged.
- (4) Subsection (3) above is without prejudice to the making of an assessment under section 29(3)(c) of the Management Act and to the making of all such adjustments by way of discharge or repayment of tax or otherwise as may be required where a claimant company has obtained too much relief, or a surrendering company has forgone relief in respect of a corresponding amount.

**Modifications etc. (not altering text)**

**C46** 1990 ss.100(2), (4) and 101 and Sch.15 for changes in relation to income tax falling to be set off against corporation tax for accounting periods ending after the appointed day (see 1988 s.10).

**C47** See 1990 s.96(6)—group relief adjustments consequent upon determinations under 1970(M) ss.41A/B.

**Marginal Citations**

**M89** Source—1970 s.264; 1981 s.40(4)

#### 413 Interpretation of Chapter IV.

- (1) The following provisions of this section have effect for the interpretation of this Chapter.
- (2) <sup>M90</sup>In this Chapter—
  - “claimant company” has the meaning given by section 402(1);
  - “consortium claim” means a claim for group relief made by virtue of section 402(3);
  - “group claim” means a claim for group relief made by virtue of section 402(2);
  - “group/consortium company” means a company which is both a member of a group of companies and a company owned by a consortium;
  - “group relief” has the meaning given by section 402(1);
  - “relevant accounting period” means an accounting period beginning after 31st July 1985; and
  - “surrendering company” has the meaning given by section 402(1).
- (3) <sup>M91</sup>For the purposes of this Chapter—
  - (a) two companies shall be deemed to be members of a group of companies if one is the 75 per cent. subsidiary of the other or both are 75 per cent. subsidiaries of a third company;

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- (b) “holding company” means a company the business of which consists wholly or mainly in the holding of shares or securities of companies which are its 90 per cent. subsidiaries and which are trading companies; and
  - (c) “trading company” means a company the business of which consists wholly or mainly in the carrying on of a trade or trades.
- (4) In applying for the purposes of this Chapter the definition of “75 per cent. subsidiary” in section 838, any share capital of a registered industrial and provident society shall be treated as ordinary share capital.
- (5) <sup>F39</sup> . . . in determining for the purposes of this Chapter whether one company is a 75 per cent. subsidiary of another, the other company shall be treated as not being the owner—
- (a) of any share capital which it owns directly in a body corporate if a profit on a sale of the shares would be treated as a trading receipt of its trade; or
  - (b) of any share capital which it owns indirectly, and which is owned directly by a body corporate for which a profit on a sale of the shares would be a trading receipt,<sup>F39</sup> . . .
  - (c) <sup>F39</sup> . . . . .
- (6) <sup>M92</sup>References to a company being owned by a consortium shall be construed in accordance with paragraph (a) below except for the purposes of the definition of “group consortium company” in subsection (2) above and of sections 403(10), 406(1)(b) and 409(5), (6) and (7), and for those purposes shall be construed in accordance with paragraph (b) below—
- (a) a company is owned by a consortium if three-quarters or more of the ordinary share capital of the company is beneficially owned between them by companies of which none beneficially owns less than one-twentieth of that capital;
  - (b) a company is owned by a consortium if—
    - (i) it is either such a trading company as is referred to in paragraph (a) or (b) of subsection (3) of section 402 or such a holding company as is referred to in paragraph (c) of that subsection, and
    - (ii) three-quarters or more of the ordinary share capital of the company or, in the case of a company within section 402(3)(b), of its holding company is beneficially owned between them by companies of which none beneficially owns less than one-twentieth of that capital;
 and the companies which so own three-quarters or more of that ordinary share capital are in this Chapter called the members of the consortium.
- (7) <sup>M93</sup>Notwithstanding that at any time a company (“the subsidiary company”) is a 75 per cent. subsidiary or a 90 per cent. subsidiary of another company (“the parent company”) it shall not be treated at that time as such a subsidiary for the purposes of this Chapter unless, additionally at that time—
- (a) the parent company is beneficially entitled to not less than 75 per cent. or, as the case may be, 90 per cent. of any profits available for distribution to equity holders of the subsidiary company; and
  - (b) the parent company would be beneficially entitled to not less than 75 per cent. or, as the case may be, 90 per cent. of any assets of the subsidiary company available for distribution to its equity holders on a winding-up.
- (8) <sup>F40</sup> . . . . .



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(9) <sup>F40</sup> .....

(10) Schedule 18 shall have effect for supplementing this section.

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**Textual Amendments**

**F39** S. 413(5)(c) and preceding word repealed (with effect in accordance with Sch. 27 para. 6(4) of the repealing Act) by Finance Act 2000 (c. 17), Sch. 27 para. 2(2), **Sch. 40 Pt. 2(11)**, Note 3

**F40** S. 413(8)(9) repealed (retrospectively) by Finance Act 2000 (c. 17), s. 100(3)(b)(5), **Sch. 40 Pt. 2(11)**, Note 2

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**Modifications etc. (not altering text)**

**C48** S. 413(6)(a) applied (retrospective to 5.11.1993) by Finance Act 1994 (c. 9), s. 252(2), **Sch. 24 para. 17(7)**

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**Marginal Citations**

**M90** Source—1970 s.258; 1985 Sch.9 1

**M91** Source—1970 s.258(5)-(7)

**M92** Source—1970 s.258(8); 1984 s.46(2); 1985 Sch.9 1(a)

**M93** Source—1973 s.28(2)-(5); 1981 s.40(5)

**Status:**

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