



# Income and Corporation Taxes Act 1988

## 1988 CHAPTER 1

### PART X

#### LOSS RELIEF AND GROUP RELIEF

#### CHAPTER I

#### LOSS RELIEF: INCOME TAX

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

- C1** Pt. 10 Chs. 1, 2 extended (with effect in accordance with s. 44 of the extending Act) by [Finance Act 1998 \(c. 36\)](#), [Sch. 6 para. 2](#) (with [Sch. 6 para. 6](#))
- C2** Pt. 10 Chs. 1, 2 extended (with effect in accordance with s. 64, Sch. 22 paras. 16-18 of the extending Act) by [Finance Act 2002 \(c. 23\)](#), [Sch. 22 para. 4\(2\)\(d\)](#)
- C3** Pt. 10 Ch. 1 modified (6.4.2005 with effect in accordance with s. 883(1) of the modifying Act) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\)](#), [ss. 226, 227, 232\(3\)](#) (with [Sch. 2](#))

*[<sup>F1</sup>Losses from Schedule A business or overseas property business]*

##### Textual Amendments

- F1** [S. 379A](#) cross-heading substituted (with effect in accordance with [s. 38\(2\)\(3\)](#) of the amending Act) by [Finance Act 1998 \(c. 36\)](#), [Sch. 5 para. 26](#) (with [Sch. 5 para. 73](#))

#### **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—

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- (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 [<sup>F2</sup>profits] of that business for the year to which it is carried forward; and
  - (b) where there are no [<sup>F2</sup>profits] for the following year or the [<sup>F2</sup>profits] 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 <sup>F3</sup> . . . capital allowances treated as expenses of that business in computing that loss exceeds, by any amount (“the net capital allowances”), the amount of any charges under [<sup>F4</sup>the Capital Allowances 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;
- <sup>F5</sup> . . . . .
- (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 [<sup>F6</sup>return made by the claimant under section 8 or 8A] 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

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- 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—
- (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 [<sup>F2</sup>profits arising] 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.

#### Textual Amendments

- F2** Words in s. 379A(1)(a)(b)(7) substituted (31.7.1998) by Finance Act 1998 (c. 36), s. 46(3), **Sch. 7 para. 1**
- F3** Word in s. 379A(2)(a) repealed (with effect in accordance with Sch. 15 para 9(1) of the repealing Act) by Finance Act 1997 (c. 16), Sch. 15 para. 2(1)(a), **Sch. 18 Pt. 6(11)**, Note
- F4** Words in s. 379A(2)(a) substituted (with effect in accordance with s. 579(1) of the amending Act) by Capital Allowances Act 2001 (c. 2), **Sch. 2 para. 28** (with Sch. 3)
- F5** Words in s. 379A(2) repealed (with effect in accordance with Sch. 15 para 9(1) of the repealing Act) by Finance Act 1997 (c. 16), Sch. 15 para. 2(1)(b), **Sch. 18 Pt. 6(11)**, Note
- F6** Words in s. 379A(3) substituted (with effect in accordance with s. 88(3) of the amending Act) by Finance Act 2001 (c. 9), **Sch. 29 para 35(2)**

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

- C4** S. 379A restricted (1.5.1995) by [Finance Act 1995 \(c. 4\), s. 41\(8\)](#)
- C5** 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\(2\)\(3\)](#)
- C6** 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\(4\)](#)

#### **[<sup>F7</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.]

#### **Textual Amendments**

- F7** 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.**

[<sup>F8</sup>(1) Where in any year of assessment any person sustains a loss in any trade, profession, vocation or employment carried on by him either solely or in partnership, he may, by notice given within twelve months from the 31st January next following that year, make a claim for relief from income tax on—

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

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

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

(3) <sup>F9</sup> .....

<sup>F10</sup>(4) <sup>M1</sup>This section applies in relation to losses sustained in the occupation of woodlands in respect of which a person has elected under [<sup>F11</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**

- F8** S. 380(1)(2) substituted (with effect in accordance with s. 218 of the amending Act) by [Finance Act 1994 \(c. 9\), s. 209\(1\)](#) (with [Sch. 20](#))
- F9** S. 380(3) repealed (with effect in accordance with s. 215(4)(5) of the repealing Act) by [Finance Act 1994 \(c. 9\), s. 216\(3\)\(b\), Sch. 26 Pt. 5\(24\)](#), Note 4(a) (as s. 215(5) of that Act is modified (1.5.1995) by [1995 c. 4, s. 125\(1\)](#)) (with [Sch. 20](#))

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**F10** See 1988(F) s.148 and Sch.14 Part V regarding repeal of s.380(4) from 6 April 1993.

**F11** 1988(F) Sch.6 para.8 from 15 March 1988. Previously “section 54”.

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

**C7** 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)

**C8** 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**

**C9** S. 380(1) modified (3.5.1994) by **Finance Act 1994** (c. 9), **Sch. 20 para. 8**

**C10** S. 380(1) modified (1992-93, 1993-94 and 1994-5) by **The Lloyd's Underwriters (Tax) (1992-93 to 1996-97) Regulations 1995** (S.I. 1995/352), regs. 1, 14, 15, **Sch.**

**C11** See—1990(C) s.142—restriction of set off of first-year allowances.

**Marginal Citations**

**M1** Source—1970 s.168(8)

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

- (1) <sup>M2</sup>Where an individual carrying on a trade sustains a loss in the trade in—
  - (a) the year of assessment in which it is first carried on by him; or
  - (b) any of the next three years of assessment;he may, by notice given [<sup>F12</sup>on or before the first anniversary of the 31st January next following] the year of assessment in which the loss is sustained, make a claim for relief under this section.
- (2) <sup>M3</sup>Subject to section 492 and this section, relief shall be given under subsection (1) above from income tax on [<sup>F13</sup>so much of the claimant's income as is equal to the amount of the loss or, where it is less than that amount, the whole of that income], being income for the three years of assessment last preceding that in which the loss is sustained, taking income for an earlier year before income for a later year.
- (3) <sup>M4</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>M5</sup>Relief shall not be given under subsection (1) above in respect of a loss sustained in any period unless <sup>F14</sup>. . . 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—
  - (a) at the time when it is first carried on by him he is married to and living with another individual who has previously carried on the trade; and
  - (b) the loss is sustained in a year of assessment later than the third year of assessment after that in which the trade was first carried on by the other individual.
- (6) <sup>F15</sup> . . . . .

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- (7) <sup>M6</sup>This section applies, with the necessary modifications, in relation to a profession or vocation as it applies in relation to a trade.

#### Textual Amendments

- F12** Words in s. 381(1) substituted (with effect in accordance with s. 135(2) of the amending Act) by Finance Act 1996 (c. 8), **Sch. 21 para. 10**
- F13** Words in s. 381(2) substituted (with effect in accordance with s. 218 of the amending Act) by Finance Act 1994 (c. 9), s. 209(2) (with Sch. 20)
- F14** Words in s. 381(4) repealed (with effect in accordance with s. 134(2) of the repealing Act) by Finance Act 1996 (c. 8), Sch. 20 para. 24, **Sch. 41 Pt. 5(10)**, Note
- F15** S. 381(6) repealed (with effect in accordance with s. 215(4)(5) of the repealing Act) by Finance Act 1994 (c. 9), s. 216(3)(c), **Sch. 26 Pt. 5(24)**, Note 4(a) (as s. 215(5) of that Act is modified (1.5.1995) by 1995 c. 4, s. 125(1)) (with Sch. 20)

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

- C12** S. 381(1) modified for the year of assessment 1988-89 by S.I. 1991/851, reg. 9, **Sch.2**.  
S. 381(1) modified (for the year of assessment 1989-90 only) (28.3.1992) by S.I. 1992/511, reg. 9, **Sch.2**.
- C13** S. 381(1) applied with modification (23.3.1993) by S.I. 1993/415, reg. 9, **Sch.2**
- C14** S. 381(1) modified (1991-92) by The Lloyd's Underwriters (Tax) (1991-92) Regulations 1994 (S.I. 1994/728), regs. 1, 9, **Sch. 2**
- C15** S. 381(1) modified (1992-93, 1993-94 and 1994-5) by The Lloyd's Underwriters (Tax) (1992-93 to 1996-97) Regulations 1995 (S.I. 1995/352), regs. 1, 14, 15, **Sch.**
- C16** See S.I. 1987 No.530 (in Part III Vol.5) regn. 15—*non-resident entertainers and sportsmen*.
- C17** See 1990(C) s.142—*restriction of set-off of first-year allowances*.

#### Marginal Citations

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

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

- (1) <sup>M7</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>M8</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>F16</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.

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- [<sup>F17</sup>(3) Subject to subsection (4) below, for the purposes of sections 380 and 381, the amount of a loss sustained in a trade, profession or vocation shall be computed in like manner and in respect of the same period as the [<sup>F18</sup>profits arising] from the trade, profession or vocation are computed under the provisions of the Income Tax Acts applicable to Case I or II of Schedule D.
- (4) An amount of a loss which, apart from this subsection, would fall to be included in the computations for two successive years of assessment shall not be included in the computation for the second of those years.]

#### Textual Amendments

- F16** Repealed by 1988(F) s.148 and Sch.14 Part VIII for 1990-91 and subsequent years.
- F17** S. 382(3)(4) substituted (with effect in accordance with ss. 209(7), 218 of the amending Act) by Finance Act 1994 (c. 9), s. 209(3) (with Sch. 20)
- F18** Words in s. 382(3) substituted (31.7.1998) by Finance Act 1998 (c. 36), s. 46(3), Sch. 7 para. 1

#### Marginal Citations

- M7** Source—1970 s.168(3); 1971 s.16(2)(a); 1978 s.30(7)(a)
- M8** Source—1970 s.168(4); 1978 s.30(7)(a)

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

<sup>F19</sup> . . . . .

#### Textual Amendments

- F19** S. 383 repealed (with effect in accordance with ss. 211(2), 218(1)(b) of the repealing Act) by Finance Act 1994 (c. 9), s. 214(1)(b), Sch. 26 Pt. 5(24), Note 5

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

- (1) <sup>M9</sup>Subject to subsection (2) below, a loss <sup>F20</sup>. . . shall not be available for relief under section 380 unless <sup>F21</sup>. . . , 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 <sup>F22</sup>. . . by any person in the exercise of functions conferred by or under any enactment (including an enactment contained in a local or private Act); <sup>F23</sup>. . .
- (b) <sup>F23</sup> . . . . .
- (3) <sup>M10</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



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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) <sup>F24</sup> .....
- (6) [<sup>F25M11</sup>There shall be disregarded for the purposes of sections 380 and 381 so much of any loss as derives from any allowances] made to an individual [<sup>F26</sup>under Part 2 of the Capital Allowances Act in respect of expenditure incurred on the provision of plant or machinery] for leasing in the course of a trade unless—
- (a) the trade is carried on by him (alone or in partnership) for a continuous period of at least six months in, or beginning or ending in, [<sup>F27</sup>the year of assessment in which the loss was sustained]; and
  - (b) he devotes substantially the whole of his time to carrying it on (alone or in partnership) throughout that year or if it is set up or permanently discontinued (or both) in that year, for a continuous period of at least six months beginning or ending in that year.
- (7) <sup>M12</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>M13</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.
- [<sup>F28</sup>(9) Where at any time a trade is carried on so as to afford a reasonable expectation of profit, it shall be treated for the purposes of subsection (1) above as being carried on at that time with a view to the realisation of profits.]
- (10) Subsections (1) to (5) and (9) above—
- (a) apply to professions and vocations as they apply to trades, with references to a commercial basis construed accordingly; and
  - (b) have effect without prejudice to section 397;
- <sup>F29</sup> .....
- [<sup>F30</sup>(11) Expressions used in subsections (6) to (8) and in Part 2 of the Capital Allowances Act have same meaning in those subsections as in that Part; and those subsections are without prejudice to section 384A.]

#### Textual Amendments

- F20** Words in s. 384(1) repealed (with effect in accordance with ss. 211(2), 218(1)(b) of the repealing Act) by Finance Act 1994 (c. 9), s. 214(1)(c), Sch. 26 Pt. 5(24), Note 5
- F21** Words in s. 384(1) repealed (with effect in accordance with s. 134(2) of the repealing Act) by Finance Act 1996 (c. 8), Sch. 20 para. 25(1), Sch. 41 Pt. 5(10), Note
- F22** Words in s. 384(2)(a) repealed (with effect in accordance with ss. 211(2), 218(1)(b) of the repealing Act) by Finance Act 1994 (c. 9), s. 214(1)(c), Sch. 26 Pt. 5(24), Note 5
- F23** S. 384(2)(b) and preceding word repealed (with effect in accordance with ss. 211(2), 218(1)(b) of the repealing Act) by Finance Act 1994 (c. 9), s. 214(1)(c), Sch. 26 Pt. 5(24), Note 5
- F24** S. 384(5) repealed (with effect in accordance with s. 215(4)(5) of the repealing Act) by Finance Act 1994 (c. 9), s. 216(3)(d), Sch. 26 Pt. 5(24), Note 4(b) (as s. 215(5) of that Act is modified (1.5.1995) by 1995 c. 4, s. 125(1)) (with Sch. 20)



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- F25** Words in s. 384(6) substituted (with effect in accordance with ss. 211(2), 218 of the amending Act) by Finance Act 1994 (c. 9), s. 214(2)(a)
- F26** Words in s. 384(6) substituted (with effect in accordance with s. 579(1) of the amending Act) by Capital Allowances Act 2001 (c. 2), Sch. 2 para. 29(1) (with Sch. 3)
- F27** Words in s. 384(6)(a) substituted (with effect in accordance with ss. 211(2), 218 of the amending Act) by Finance Act 1994 (c. 9), s. 214(2)(b)
- F28** S. 384(9) substituted (with effect in accordance with s. 134(2) of the amending Act) by Finance Act 1996 (c. 8), Sch. 20 para. 25(2)
- F29** Words in s. 384(10) repealed (with effect in accordance with s. 579(1) of the repealing Act) by Capital Allowances Act 2001 (c. 2), Sch. 2 para. 29(2), Sch. 4 (with Sch. 3)
- F30** S. 384(11) inserted (with effect in accordance with s. 579(1) of the amending Act) by Capital Allowances Act 2001 (c. 2), Sch. 2 para. 29(2) (with Sch. 3)

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#### Marginal Citations

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

### [<sup>F31</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,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

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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**

**F31** 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.**

<sup>F32</sup>(1) Where a person has, in any trade, profession or vocation carried on by him either alone or in partnership, sustained a loss (to be computed as mentioned in subsections (3) and (4) of section 382) in respect of which relief has not been wholly given either under section 380 or any provision of the Income Tax Acts—

- (a) he may make a claim requiring that any part of the loss for which relief has not been so given shall be set off for the purposes of income tax against the income of the trade, profession or vocation for subsequent years of assessment; and
- (b) where he makes such a claim, the income from the trade, profession or vocation in any subsequent year of assessment shall be treated as reduced by that part of the loss, or by so much of that part as cannot, on that claim, be relieved against such income of an earlier year of assessment.]

(2) <sup>F33</sup> .....

(3) <sup>F34</sup> .....

(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 [<sup>F35</sup>profits] of the trade assessed under Case I of Schedule D for that year is insufficient, any interest or dividends being interest or dividends—

- (a) on investments arising in that year, and
- (b) which would fall to be taken into account as trading receipts in computing the [<sup>F35</sup>profits] of the trade for the purposes of assessment under that Case but for the fact that they have been subjected to tax under other provisions of the Income Tax Acts,

shall be treated for the purposes of the application of this section as if they were [<sup>F35</sup>profits] on which the person carrying on the trade was assessed under that Case in respect of that trade for that year of assessment, and relief shall be given accordingly by repayment or otherwise.

(5) <sup>F36</sup> .....

<sup>F37</sup>(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>F38</sup>paragraph 4 of Schedule 6 to the Finance Act 1988] have been chargeable for the following year to

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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) <sup>F39</sup> .....

#### Textual Amendments

- F32** S. 385(1) substituted (with effect in accordance with ss. 209(7), 218 of the amending Act) by [Finance Act 1994 \(c. 9\), s. 209\(4\)](#) (with [Sch. 20](#))
- F33** S. 385(2) repealed (with effect in accordance with s. 215(4)(5) of the repealing Act) by [Finance Act 1994 \(c. 9\), s. 216\(3\)\(e\), Sch. 26 Pt. 5\(24\)](#), Note 4(c) (as s. 215(5) of that Act is modified (1.5.1995) by 1995 c. 4, [s. 125\(1\)](#)) (with [Sch. 20](#))
- F34** S. 385(3) repealed (with effect in accordance with ss. 209(7), 218 of the repealing Act) by [Finance Act 1994 \(c. 9\), s. 209\(5\), Sch. 26 Pt. 5\(24\)](#), Note 6
- F35** Words in s. 385(4) substituted (31.7.1998) by [Finance Act 1998 \(c. 36\), s. 46\(3\), Sch. 7 para. 1](#)
- F36** S. 385(5) repealed (with effect in accordance with s. 215(4)(5) of the repealing Act) by [Finance Act 1994 \(c. 9\), s. 216\(3\)\(e\), Sch. 26 Pt. 5\(24\)](#), Note 4(c) (as s. 215(5) of that Act is modified (1.5.1995) by 1995 c. 4, [s. 125\(1\)](#)) (with [Sch. 20](#))
- F37** See 1988(F) Sch.14 Part V—*repeal of subs. (6) from 6 April 1993.*
- F38** 1988(F) Sch.6 para.6(8) *from 15 March 1988. Previously* “section 54”.
- F39** S. 385(8) repealed (with effect in accordance with ss. 209(7), 218 of the repealing Act) by [Finance Act 1994 \(c. 9\), s. 209\(5\), Sch. 26 Pt. 5\(24\)](#), Note 6

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

- C18** S. 385 modified (with effect in accordance with [s. 56\(9\)](#) of the amending Act) by [Finance Act 1998 \(c. 36\), s. 56\(4\)](#)
- C19** S. 385 modified by [Finance Act 1993 \(c. 34\), Sch. 20A paras. 6-8](#) (as inserted (22.7.2004) by [Finance Act 2004 \(c. 12\), Sch. 25 para. 3](#))

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

(1) <sup>M14</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 [<sup>F40</sup>profits] on which that individual was assessed under Schedule D in respect of that business for that year.

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- (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) <sup>F41</sup> .....

**Textual Amendments**

**F40** Words in s. 386(1) substituted (31.7.1998) by **Finance Act 1998 (c. 36), s. 46(3), Sch. 7 para 1**

**F41** S. 386(4) repealed (with effect in accordance with s. 215(4)(5) of the repealing Act) by **Finance Act 1994 (c. 9), s. 216(3)(f), Sch. 26 Pt. 5(24)**, Note 4(a) (as s. 215(5) of that Act is modified (1.5.1995) by 1995 c. 4, s. 125(1)) (with Sch. 20)

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**Marginal Citations**

**M14** Source—1970 s.172

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

- (1) <sup>M15</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.
- (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>M16</sup>to any payment falling within section 349(2);
  - (b) <sup>M17</sup>to any payment falling within section 349 by virtue of section 43(1);
  - (c) <sup>F42</sup> .....
  - (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>F43</sup> or royalties in respect of a right in a design to which section 537B applies; <sup>F44</sup> . . .
  - (f) <sup>F44</sup> .....

**Textual Amendments**

**F42** S. 387(3)(c) repealed (with effect in accordance with Sch. 18 Pt. 6(2) Note of the repealing Act) by **Finance Act 1997 (c. 16), Sch. 18 Pt. 6(2)**

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**F43** 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.)

**F44** S. 387(3)(f) and preceding word repealed (with effect in accordance with Sch. 18 Pt. 6(10) Note 3 of the repealing Act) by Finance Act 1997 (c. 16), Sch. 18 Pt. 6(10); S.I. 1997/991, art. 2

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#### Marginal Citations

**M15** Source—1970 s.173(1), (2)

**M16** Source—1970 s.173(3)(aa); 1970(F) Sch.4 9(6)

**M17** Source—1970 s.173(3)(a)-(c)

### 388 Carry-back of terminal losses.

- (1) <sup>M18</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 [<sup>F45</sup>profits] on which he has been charged to income tax under Schedule D in respect of the trade, profession or vocation for [<sup>F46</sup>the year of assessment in which the discontinuance occurs and the three years last preceding it]; and there shall be made all such reductions of assessments or repayments of tax as may be necessary to give effect to the claim.
- (2) Relief shall not be given in respect of the same matter both under this section and under some other provision of the Income Tax Acts.
- (3) <sup>M19</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 [<sup>F45</sup>profits] of the trade charged to income tax under Schedule D for any year because the amount of those [<sup>F45</sup>profits] is insufficient,any relevant interest or dividends arising in that year shall be treated for the purposes of the application of this section as if they were [<sup>F45</sup>profits] on which the person carrying on the trade was assessed under Case I of Schedule D in respect of that trade for that year of assessment, and relief shall be given accordingly by repayment or otherwise.

For the purposes of this subsection “any relevant interest or dividends” means interest or dividends which would fall to be taken into account as trading receipts in computing the [<sup>F45</sup>profits] 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 [<sup>F45</sup>profits] on which a person or partnership has been charged to income tax for any year of assessment shall be treated for the purposes of any relief under this section from the assessment for that year as reduced by the amount of those [<sup>F45</sup>profits] applied in making any payment from which income tax was deducted, but was not accounted for because the payment was made out of profits or gains brought into charge to income tax; and the like reduction shall be made in the amount of the terminal loss for which relief may be given under this section from the assessments for earlier years unless

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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) <sup>F47</sup> . . . . .
  - (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;  
<sup>F47</sup> . . . . .
  - (d) <sup>F47</sup> . . . . .
- (7) <sup>F48</sup> . . . 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 [<sup>F45</sup>profits] under the provisions of the Income Tax Acts applicable to Cases I and II of Schedule D.

#### Textual Amendments

- F45** Words in s. 388(1)(4)(5)(7) substituted (31.7.1998) by Finance Act 1998 (c. 36), s. 46(3), **Sch. 7 para. 1**
- F46** Words in s. 388(1) substituted (with effect in accordance with s. 218 of the amending Act) by Finance Act 1994 (c. 9), s. 209(6) (with Sch. 20)
- F47** S. 388(6)(b)(d) (and word preceding (d)) repealed (with effect in accordance with ss. 211(2), 218(1)(b) of the repealing Act) by Finance Act 1994 (c. 9), s. 214(1)(d), **Sch. 26 Pt. 5(24)**, Note 5(a) (with Sch. 20)
- F48** Words in s. 388(7) repealed (with effect in accordance with ss. 211(2), 218(1)(b) of the repealing Act) by Finance Act 1994 (c. 9), s. 214(1)(d), **Sch. 26 Pt. 5(24)**, Note 5(a) (with Sch. 20)

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

- C20** S. 388 restricted (9.3.1995 with effect in accordance with reg. 1 of the affecting S.I.) by The Lloyd's Underwriters (Tax) Regulations 1995 (S.I. 1995/351), **reg. 14(3)**
- C21** S. 388 modified (1.12.1997 with effect in accordance with reg. 1 of the affecting S.I.) by The Lloyd's Underwriters (Scottish Limited Partnerships) (Tax) Regulations 1997 (S.I. 1997/2681), **reg. 10**
- C22** See 1990(C) ss.30-31(*ships*)—*carry forward does not include postponement under 1990(C) ss.30-31.*

#### Marginal Citations

- M18** Source—1970 s.174(1)
- M19** Source—1970 s.174(2)-(6)

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

- (1) <sup>M20</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.



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- (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>F49</sup>Part 5 of the Capital Allowances Act], a claim for relief is made both under section 388 above and [<sup>F50</sup>section 355 of that Act](carry-back of balancing allowances), the balancing allowance in respect of which the claim is made under [<sup>F51</sup>section 355] shall be left out of account for the purposes of section 388(6), but relief under section 388 shall be given in priority to relief under [<sup>F51</sup>section 355].
- (3) <sup>F52</sup> .....
- [<sup>F53</sup>(4) For the purposes of this section and section 388 a trade, profession or vocation shall be treated as discontinued, and a new one as set up and commenced, when it is so treated for the purposes of section 111 or 113.]
- (5) <sup>F54</sup> .....
- (6) <sup>F54</sup> .....
- (7) <sup>F54</sup> .....
- <sup>F55</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

- F49** Words in s. 389(2) substituted (with effect in accordance with s. 579(1) of the amending Act) by Capital Allowances Act 2001 (c. 2), **Sch. 2 para. 31(a)** (with Sch. 3)
- F50** Words in s. 389(2) substituted (with effect in accordance with s. 579(1) of the amending Act) by Capital Allowances Act 2001 (c. 2), **Sch. 2 para. 31(b)** (with Sch. 3)
- F51** Words in s. 389(2) substituted (with effect in accordance with s. 579(1) of the amending Act) by Capital Allowances Act 2001 (c. 2), **Sch. 2 para. 31(c)** (with Sch. 3)
- F52** S. 389(3) repealed (with effect in accordance with s. 215(4)(5) of the repealing Act) by Finance Act 1994 (c. 9), s. 216(3)(g), **Sch. 26 Pt. 5(24)**, Note 4(d) (as s. 215(5) of that Act is modified (1.5.1995) by 1995 c. 4, s. 125(1)) (with Sch. 20)
- F53** S. 389(4) substituted (with effect in accordance with s. 215(4)(5) of the amending Act) by Finance Act 1994 (c. 9), s. 216(4) (as s. 215(5) of that Act is modified (1.5.1995) by 1995 c. 4, s. 125(1)) (with Sch. 20)
- F54** S. 389(5)-(7) repealed (with effect in accordance with ss. 211(2), 218(1)(b) of the repealing Act) by Finance Act 1994 (c. 9), s. 214(1)(e), **Sch. 26 Pt. 5(24)**, Note 5(c) (with Sch. 20)
- F55** See 1988(F) Sch.14 Part V for repeal of subs. (8) from 6 April 1993.

#### Marginal Citations

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

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

<sup>M21</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



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- (b) full effect cannot be given to such relief in respect of the payment by reason of a want or deficiency of income of the year of assessment in which the payment is made,

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

#### Marginal Citations

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

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

- (1) <sup>M22</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>M23</sup>Relief shall not be given by virtue of subsection (1) above except on income falling within section 65(2) or (3) [<sup>F56</sup>of this Act or section 23, 355 or 615 of ITEPA 2003].

#### Textual Amendments

F56 Words in s. 391(2) substituted (6.4.2003 with effect in accordance with s. 723(1) of the amending Act) by *Income Tax (Earnings and Pensions) Act 2003 (c. 1), Sch. 6 para. 53 (with Sch. 7)*

#### Marginal Citations

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

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

### *Case VI losses*

### 392 Case VI losses.

- (1) <sup>M24</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—
- [<sup>F57</sup>(a) that the amount of the loss sustained by him shall, as far as may be, be deducted from or set off against the total of—
- (i) 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
  - (ii) the amount of any qualifying income on which tax is charged under Part 9 of ITEPA 2003 (pension income) for that year, and
- (b) that any portion of the loss for which relief is not so given shall, as far may be, be carried forward and deducted from or set off against the total of—

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- (i) the amount of any profits or gains arising from any transaction in respect of which he is assessed under that Case for any subsequent year of assessment, and
  - (ii) the amount of any qualifying income on which tax is charged under Part 9 of ITEPA 2003 for the 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.
- [<sup>F58</sup>(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—
  - (a) any profits or gains arising from any transaction in respect of which he is assessed under Case VI of Schedule D for any year, or
  - (b) any qualifying income on which tax is charged under Part 9 of ITEPA 2003 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 [<sup>F59</sup>on or before the fifth anniversary of the 31st January next following] 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 [<sup>F60</sup>on or before the fifth anniversary of the 31st January next following] that year of assessment.
- [<sup>F61</sup>(6) For the purposes of subsection (1)(a)(ii) and (b)(ii) and subsection (3)(b) income is “qualifying income” if—
  - (a) section 583 of ITEPA 2003 applies to it and the paying scheme (see subsection (3) of that section) is a pilots' benefit fund (see section 587 of ITEPA 2003), or
  - (b) section 623 of ITEPA 2003 applies to it.]

#### Textual Amendments

- F57** S. 392(1)(a)(b) substituted (6.4.2003 with effect in accordance with s. 723(1) of the amending Act) by [Income Tax \(Earnings and Pensions\) Act 2003 \(c. 1\)](#), [Sch. 6 para. 54\(2\)](#) (with [Sch. 7](#))
- F58** S. 392(3) substituted (6.4.2003 with effect in accordance with s. 723(1) of the amending Act) by [Income Tax \(Earnings and Pensions\) Act 2003 \(c. 1\)](#), [Sch. 6 para. 54\(3\)](#) (with [Sch. 7](#))
- F59** Words in s. 392(5) substituted (with effect in accordance with s. 135(2) of the amending Act) by [Finance Act 1996 \(c. 8\)](#), [Sch. 21 para. 11\(a\)](#)
- F60** Words in s. 392(5) substituted (with effect in accordance with s. 135(2) of the amending Act) by [Finance Act 1996 \(c. 8\)](#), [Sch. 21 para. 11\(b\)](#)
- F61** S. 392(6) inserted (6.4.2003 with effect in accordance with s. 723(1) of the amending Act) by [Income Tax \(Earnings and Pensions\) Act 2003 \(c. 1\)](#), [Sch. 6 para. 54\(4\)](#) (with [Sch. 7](#))

#### Marginal Citations

- M24** Source—1970 s.176

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## CHAPTER II

### LOSS RELIEF: CORPORATION TAX

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

- C23** See s.434A—*limitations on loss relief for life assurance company.*
- C24** Pt. 10 Chs. 1, 2 extended (with effect in accordance with s. 44 of the extending Act) by [Finance Act 1998 \(c. 36\)](#), [Sch. 6 para. 2](#), (with Sch. 6 para. 6)
- C25** Pt. 10 Chs. 1, 2 extended (with effect in accordance with s. 64, Sch. 22 paras. 16-18 of the extending Act) by [Finance Act 2002 \(c. 23\)](#), [Sch. 22 para. 4\(2\)\(d\)](#)
- C26** Pt. 10 Ch. 2 modified (1.4.2009 with effect in accordance with s. 1329(1) of the modifying Act) by [Corporation Tax Act 2009 \(c. 4\)](#), [s. 39\(3\)](#) (with [Sch. 2 Pts. 1, 2](#))

#### *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 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.

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- (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)**

- C27** 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.

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

- C28** S. 392B excluded (19.7.2006) by [Finance Act 2006 \(c. 25\)](#), s. 113(5), [Sch. 17 para. 12\(2\)](#)
- C29** 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>M25</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 [<sup>F62</sup>section 393A(1)], be relieved against income or profits of an earlier accounting period.

<sup>F63</sup>(2) .....

<sup>F63</sup>(3) .....

<sup>F63</sup>(4) .....

<sup>F63</sup>(4A) .....

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<sup>F63</sup>(4B) .....

<sup>F63</sup>(5) .....

<sup>F63</sup>(6) .....

(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 years; <sup>F64</sup> . . .

#### Textual Amendments

**F62** Words in s. 393(1) substituted by Finance Act 1991 (c. 31, SIF 63:1), s. 73(3)-(5), **Sch. 15 para. 8(a)**

**F63** S. 393(2)-(6) repealed by Finance Act 1991 (c. 31, SIF 63:1), ss. 73(2)(4)(5), 123, **Sch. 19 Pt. v Note 4**

**F64** Words in s. 393(11) repealed by Finance Act 1991 (c. 31, SIF 63:1), ss. 73(3)-(5), 123, **Sch. 15 para. 8(b)**, **Sch. 19 Pt. V Note 4**

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

**C30** S. 393 modified (with effect in accordance with s. 69(1) of the modifying Act) by Finance Act 2000 (c. 17), **Sch. 20 para. 19** (with **Sch. 20 para. 26**)

**C31** S. 393 modified (with effect in accordance with s. 70(1) of the modifying Act) by Finance Act 2001 (c. 9), **Sch. 22 para. 17(2)-(5)** (with **Sch. 22 para. 32**)

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- C32** S. 393 modified (1.4.2002) by [The Scottish Water \(Transfer of Functions, etc.\) \(Tax Provisions\) Order 2002 \(S.I. 2002/653\)](#), **art. 4(2)**
- C33** S. 393 modified (with effect in accordance with Sch. 13 para. 28 of the modifying Act) by [Finance Act 2002 \(c. 23\)](#), **Sch. 13 paras. 13, 15(6), 16(5)(1)(a), 19**
- C34** S. 393 modified (5.10.2004) by [Energy Act 2004 \(c. 20\)](#), **ss. 27(1)(b), 198(2)**; [S.I. 2004/2575](#), **art. 2(1), Sch. 1**
- C35** 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).
- C36** 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.
- C37** S. 393(1) modified (retrospective to 11.1.1994) by [Finance Act 1994 \(c. 9\)](#), s. 252(3), **Sch. 24 para. 15**
- C38** 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

**M25** Source—1970 s.177(1)-(3)

### [<sup>F65</sup>393A] 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)—
- of that accounting period, and
  - 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) [<sup>F66</sup>is (subject to subsection (2A) below) the period of twelve months] 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.

[ This section shall have effect in relation to any loss to which this subsection applies <sup>F67</sup>(2A) as if, in subsection (2) above, the words “three years” were substituted for the words “twelve months”.

- (2B) Where a company ceases to carry on a trade at any time, subsection (2A) above applies to the following—
- the whole of any loss incurred in that trade by that company in an accounting period beginning twelve months or less before that time; and
  - the part of any loss incurred in that trade by that company in an accounting period ending, but not beginning, in that twelve months which is proportionate to the part of that accounting period falling within those twelve months.

(2C) Where—

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- (a) a loss is incurred by a company in a ring fence trade carried on by that company, and
- (b) the accounting period in which the loss is incurred is an accounting period for which an allowance under [F68]section 164 of the Capital Allowances Act (abandonment expenditure incurred before cessation of ring fence trade)] is made to that company,

subsection (2A) above applies to so much of the amount of that loss not falling within subsection (2B) above as does not exceed the amount of that allowance.]

- (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) [F69]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—
  - [F70](a) where at any time a trade is carried on so as to afford a reasonable expectation of gain, it shall be treated as being carried on at that time 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) [F71] .....

(6) [F71] .....

- (7) [F72]Subject to subsection (7A) below,] 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 [F73]an accounting period ending with the cessation, or ending at any time in the twelve months immediately preceding the cessation,] as it applies in computing a loss in an accounting period for the purposes of subsection (1) of that section.

[ For the purposes of this section where—

- [F74](7A) (a) subsection (7) above has effect for computing the loss for any accounting period, and
- (b) that accounting period is one beginning before the beginning of the twelve months mentioned in that subsection,

the part of that loss that is not the part falling within subsection (2B)(b) above shall be treated as reduced (without any corresponding increase in the part of the loss that does fall within subsection (2B)(b) above) by an amount equal to so much of the aggregate of the charges on income treated as expenses by virtue of subsection (7) above as is proportionate to the part of the accounting period that does not fall within those twelve months.]



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- (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.
- (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 [<sup>F75</sup>section 165 of the Capital Allowances Act (abandonment expenditure within 3 years of ceasing ring fence trade)] 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 [<sup>F76</sup>section 416 of that Act (expenditure on restoration within 3 years of ceasing to trade)] any expenditure is treated as qualifying expenditure incurred by the company on [<sup>F77</sup>the last day of trading],
- 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”.

[ In this section “ring fence trade” has the same meaning as in [<sup>F79</sup>section 162 of the <sup>F78</sup>(12) Capital Allowances Act].]

#### Textual Amendments

- F65** S. 393A inserted by Finance Act 1991 (c. 31, SIF 63:1), s. 73(1)(4)(5)
- F66** Words in s. 393A(2) substituted (with application in accordance with s. 39(8)-(12) of the amending Act) by Finance (No. 2) Act 1997 (c. 58), s. 39(2)
- F67** S. 393A(2A)-(2C) inserted (with application in accordance with s. 39(8)-(12) of the amending Act) by Finance (No. 2) Act 1997 (c. 58), s. 39(3)
- F68** Words in s. 393A(2C)(b) substituted (with effect in accordance with s. 579(1) of the amending Act) by Capital Allowances Act 2001 (c. 2), Sch. 2 para. 32(1) (with Sch. 3)
- F69** Word in s. 393A(3)(b) substituted (with effect in accordance with s. 134(2) of the amending Act) by Finance Act 1996 (c. 8), Sch. 20 para. 26(a)
- F70** S. 393A(4)(a) substituted (with effect in accordance with s. 134(2) of the amending Act) by Finance Act 1996 (c. 8), Sch. 20 para. 26(b)
- F71** S. 393A(5)(6) repealed (with effect in accordance with s. 579(1) of the repealing Act) by Capital Allowances Act 2001 (c. 2), Sch. 2 para. 32(2), Sch. 4 (with Sch. 3)
- F72** Words in s. 393A(7) inserted (with application in accordance with s. 39(8)-(12) of the amending Act) by Finance (No. 2) Act 1997, s. 39(4)(a)

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- F73** Words in s. 393A(7) substituted (with application in accordance with s. 39(8)-(12) of the amending Act) by Finance (No. 2) Act 1997 (c. 58), s. 39(4)(b)
- F74** S. 393A(7A) inserted (with application in accordance with s. 39(8)-(12) of the amending Act) by Finance (No. 2) Act 1997 (c. 58), s. 39(5)
- F75** Words in s. 393A(11)(a) substituted (with effect in accordance with s. 579(1) of the amending Act) by Capital Allowances Act 2001 (c. 2), Sch. 2 para. 32(3)(a) (with Sch. 3)
- F76** Words in s. 393A(11)(b) substituted (with effect in accordance with s. 579(1) of the amending Act) by Capital Allowances Act 2001 (c. 2), Sch. 2 para. 32(3)(b) (with Sch. 3)
- F77** Words in s. 393A(11)(b) substituted (with effect in accordance with s. 579(1) of the amending Act) by Capital Allowances Act 2001 (c. 2), Sch. 2 para. 32(3)(b) (with Sch. 3)
- F78** S. 393A(12) inserted (with application in accordance with s. 39(8)-(12) of the amending Act) by Finance (No. 2) Act 1997 (c. 58), s. 39(6)
- F79** Words in s. 393A(12) substituted (with effect in accordance with s. 579(1) of the amending Act) by Capital Allowances Act 2001 (c. 2), Sch. 2 para. 32(4) (with Sch. 3)

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

- C39** S. 393A modified (with effect in accordance with Sch. 13 para. 28 of the modifying Act) by Finance Act 2002 (c. 23), Sch. 13 paras. 13, 15(5), 16(4)(a)(b)(5)(b)
- C40** S. 393A modified (5.10.2004) by Energy Act 2004 (c. 20), ss. 27(1)(b), 198(2); S.I. 2004/2575, art. 2(1), Sch. 1
- C41** S. 393A(1) restricted (with effect in accordance with Sch. 10 para. 2 of the affecting Act) by Finance Act 2006 (c. 25), Sch. 10 para. 38(4)
- C42** S. 393A(1)(b) restricted (with effect in accordance with s. 69(1) of the affecting Act) by Finance Act 2000 (c. 17), Sch. 20 para. 23 (with Sch. 20 para. 26)
- C43** S. 393A(1)(b) restricted (with effect in accordance with Sch. 10 para. 2 of the affecting Act) by Finance Act 2006 (c. 25), Sch. 10 para. 35(2)

VALID FROM 21/07/2008

**<sup>F80</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.

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- (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
  - (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

- F80** S. 393B inserted (with effect in accordance with s. 111(3) of the amending Act) by [Finance Act 2008 \(c. 9\)](#), s. 111(1)

### <sup>F81</sup>394 Terminal losses.

#### Textual Amendments

- F81** S. 394 repealed by [Finance Act 1991 \(c. 31\)](#), ss. 73(2)(4)(5), 123, [Sch. 19 Pt. V](#)

### 395 Leasing contracts and company reconstructions.

- (1) Subject to the provisions of this section, if—<sup>M26</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 [<sup>F82</sup>plant or machinery] 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 [<sup>F83</sup>under section 393(1) or in pursuance of a claim under section 393A(1) to relief] in respect of losses incurred on the leasing contract; and

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- (c) in the accounting period for which a first-year allowance, [<sup>F84</sup>within the meaning of Part 2 of the Capital Allowances 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 <sup>F85</sup> . . . as mentioned 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 <sup>F85</sup> . . . 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

- F82** Words in s. 395(1)(a) substituted (with effect in accordance with s. 579(1) of the amending Act) by Capital Allowances Act 2001 (c. 2), **Sch. 2 para. 33(a)** (with Sch. 3)
- F83** Words in s. 395(1)(b) substituted (27.7.1993) by 1993 c. 34, s. 120, **Sch. 14 para. 8(3)(a)**
- F84** Words in s. 395(1)(c) substituted (with effect in accordance with s. 579(1) of the amending Act) by Capital Allowances Act 2001 (c. 2), **Sch. 2 para. 33(b)** (with Sch. 3)
- F85** Words in s. 395(1) and (4): repealed (27.7.1993 with effect in relation to accounting periods ending after the day appointed for the purposes of section 10 of the amended Act) by 1993 c. 34, s. 213, Sch. 23 Pt.III(11), note; omitted (27.7.1993) by virtue of 1993 c. 34, s. 120, **Sch. 14 para. 8(3)(b)**

#### Marginal Citations

- M26** Source—1973 ss.30, 32(6)

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### Case VI losses

#### 396 Case VI losses.

- (1) <sup>M27</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 .

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

- C44** 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
- C45** 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)
- C46** 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))
- C47** 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

- M27** Source—1970 s.179

## CHAPTER III

### LOSS RELIEF: MISCELLANEOUS PROVISIONS

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

- (1) <sup>M28</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 [<sup>F86</sup>, computed without regard to capital allowances,] was incurred in carrying on that trade; <sup>F87</sup> . . . .
- (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

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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 [<sup>F88</sup> in any case]—

- (a) [<sup>F89</sup> where] the whole of the farming or market gardening activities in the year next following the prior five years are of such a nature, and carried on in such a way, as would have justified a reasonable expectation of the realisation of profits in the future if they had been undertaken by a competent farmer or market gardener, but
- (b) [<sup>F89</sup> where], 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—

<sup>F90</sup>

“chargeable period”, in relation to a company, means any accounting period

<sup>F91</sup>

“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) <sup>F92</sup> .....

(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, [<sup>F93</sup> but disregarding—

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

(8) 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,



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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.

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

#### Textual Amendments

- F86** Words in s. 397(1) inserted (with effect in accordance with ss. 211(2), 218 of the amending Act) by Finance Act 1994 (c. 9), s. 214(3)(a) (with Sch. 20)
- F87** Words in s. 397(1) repealed (with effect in accordance with ss. 211(2), 218(1)(b) of the repealing Act) by Finance Act 1994 (c. 9), s. 214(3)(b), Sch. 26 Pt. 5(24), Note 5(a) (with Sch. 20)
- F88** Words in s. 397(3) substituted (with effect in accordance with s. 134(2) of the amending Act) by Finance Act 1996 (c. 8), Sch. 20 para. 27(a)
- F89** Words in s. 397(3)(a)(b) substituted (with effect in accordance with s. 134(2) of the amending Act) by Finance Act 1996 (c. 8), Sch. 20 para. 27(b)
- F90** S. 397(5): definition of "basis year" repealed (with effect in accordance with s. 579(1) of the repealing Act) by Capital Allowances Act 2001 (c. 2), Sch. 2 para 34(1)(a), Sch. 4 (with Sch. 3)
- F91** S. 397(5): words in definition of "chargeable period" repealed (with effect in accordance with s. 579(1) of the repealing Act) by Capital Allowances Act 2001 (c. 2), Sch. 2 para 34(1)(b), Sch. 4 (with Sch. 3)
- F92** S. 397(6) repealed (with effect in accordance with s. 579(1) of the repealing Act) by Capital Allowances Act 2001 (c. 2), Sch. 2 para. 34(2), Sch. 4 (with Sch. 3)
- F93** Words in s. 397(7) substituted (with effect in accordance with s. 579(1) of the amending Act) by Capital Allowances Act 2001 (c. 2), Sch. 2 para. 34(3) (with Sch. 3)

#### Marginal Citations

- M28** Source—1970 s.180; 1986 s.56(7) Sch.13 2(5)

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

<sup>M29</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 <sup>F94</sup> . . . D in respect of interest payable on that amount,



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then the amount of that interest shall be included in the amounts against which [<sup>F95</sup>the amount of his loss may be set off in pursuance of a claim under section 392 or, as the case may be, against which the amount of his loss may be set off under section 396].

#### Textual Amendments

**F94** Words in s. 398(b) repealed (with effect in accordance with Sch. 7 para. 32, Sch. 41 Pt. 5(2) Note of the repealing Act) by Finance Act 1996 (c. 8), Sch. 7 para. 16, Sch. 41 Pt. 5(2) (with Sch. 7 paras. 33-35)

**F95** Words in s. 398 substituted (27.7.1993) by 1993 c. 34, s. 120, Sch. 14 para. 8(4)

#### Marginal Citations

**M29** Source—1973 s.26(2); 1974 s.30(2)

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

(1) <sup>M30</sup>If, apart from section [<sup>F96</sup>143(1) of the 1992 Act] or [<sup>F97</sup>section 128(1) above], gains arising to any person in the course of dealing in commodity or financial futures or in qualifying options would constitute, [<sup>F98</sup>for the purposes of the Income 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.

[<sup>F99</sup>(1A) Subsection (1) above does not apply to a loss arising from a transaction to which Schedule 5AA applies.]

[<sup>F100</sup>(1B) If, apart from section 143(1) of the 1992 Act or section 128(2) above, gains arising in the course of dealing in financial futures or in qualifying options would constitute, for the purposes of the Corporation Tax Acts, profits and gains chargeable to tax under Case V or VI of Schedule D, then any loss arising in the course of that dealing shall not be allowable against profits and gains which are chargeable to tax under Case V or VI of Schedule D.]

(2) <sup>M31</sup>Relief shall not be given to any person under section 380, 381 or [<sup>F101</sup>393A(1)] 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.

(5) <sup>M32</sup>In this section “commodity futures”, “financial futures” and “qualifying options” have the same meanings as in section [<sup>F102</sup>143 of the 1992 Act], 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 [<sup>F102</sup>143(3)] of that section.

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### Textual Amendments

- F96** Words in s. 399(1) substituted (6.3.1992 with effect as mentioned in s. 289(1)(2) of the amending Act) by Taxation of Chargeable Gains Act 1992 (c. 12), ss. 289, 290, **Sch. 10 para. 14(19)(a)** (with ss. 60, 101(1), 171, 201(3)).
- F97** Words in s. 399(1) substituted (with effect in accordance with s. 83(3) of the amending Act) by Finance Act 2002 (c. 23), **Sch. 27 para. 4(1)(a)** (with Sch. 28)
- F98** Words in s. 399(1) substituted (with effect in accordance with s. 83(3) of the amending Act) by Finance Act 2002 (c. 23), **Sch. 27 para. 4(1)(b)** (with Sch. 28)
- F99** S. 399(1A) inserted (with effect in accordance with s. 80(6)(7) of the amending Act) by Finance Act 1997 (c. 16), **s. 80(4)**
- F100** S. 399(1B) inserted (with effect in accordance with s. 83(3) of the amending Act) by Finance Act 2002 (c. 23), **Sch. 27 para. 4(2)** (with Sch. 28)
- F101** Words in s. 399(2) substituted by Finance Act 1991 (c. 31, SIF 63:1), s. 73(3)-(5), **Sch. 15 para. 11**
- F102** Words in s. 399(5) substituted (6.3.1992 with effect as mentioned in s. 289(1)(2) of the amending Act) by Taxation of Chargeable Gains Act 1992 (c. 12), ss. 289, 290, **Sch. 10 para. 14(19)(b)** (with ss. 60, 101(1), 171, 201(3)).

### Marginal Citations

- M30** Source—1985 s.72(1); 1987 (No.2) s.81(1)
- M31** Source—1978 s.31
- M32** Source—1985 s.72(2); 1987 Sch.15 11(2); 1987 (No.2) s.81(1)

## 400 Write-off of government investment.

- (1) <sup>M33</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—
- any losses which under section 393(1) are <sup>F103</sup> . . . available for relief against its trading income for the next accounting period;
  - 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;
- [<sup>F104</sup>(bb) any losses which—
- under section 392A(2) or 392B are carried forward to the next accounting period, or
  - under section 392A(3) are treated as management expenses disbursed in the next accounting period;]
    - any allowances which under [<sup>F105</sup>section 260(2) of the Capital Allowances Act] are available for carry forward to the next accounting period;
    - 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
    - any allowable losses available under [<sup>F106</sup>8 of the 1992 Act] so far as not allowed in that or a previous accounting period.

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- (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 [F107393A(1)] or 402 of this Act or [F108section 260(3) of the Capital Allowances 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, 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 [F109section 532 or 536 of the Capital Allowances Act] or section [F11050 of the 1992] 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 [F111profits] 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 [F112or the Scottish Ministers] is extinguished;
    - (b) if any of its shares for which a Minister of the Crown has [F113, or the Scottish Ministers have,] 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 [F114or the Scottish Ministers] assumed as such under an enactment and “public dividend capital” means any amount paid by a Minister of the Crown [F114or the Scottish Ministers] 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 [F114or the Scottish Ministers].
- [F115(9A) Nothing in section 80(5) of the Finance Act 1996 (matters to be brought into account in the case of loan relationships only under Chapter II of Part IV of that Act) shall be

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construed as preventing this section from applying where a government investment in a body corporate is written off by the extinguishment, in whole or in part, of any liability under a loan relationship.]

(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

- F103** Words in s. 400(2)(a); repealed (27.7.1993 with effect in relation to accounting periods ending after the day appointed for the purposes of section 10 of the amended Act) by 1993 c. 34, s. 213, Sch. 14 para. 8(5), **Sch. 23 Pt. III** (11), note; omitted (27.7.1993) by 1993 c. 34, s. 120, **Sch. 14 paras. 8(5)**
- F104** S. 400(2)(bb) inserted (with effect in accordance with s. 38(2)(3) of the amending Act) by Finance Act 1998 (c. 36), **Sch. 5 para. 36** (with Sch. 5 para. 73)
- F105** Words in s. 400(2)(c) substituted (with effect in accordance with s. 579(1) of the amending Act) by Capital Allowances Act 2001 (c. 2), **Sch. 2 para. 35(1)** (with Sch. 3)
- F106** Words in s. 400(2)(e) substituted (6.3.1992 with effect as mentioned in s. 289(1)(2) of the amending Act) by Taxation of Chargeable Gains Act 1992 (c. 12), ss. 289, 290, **Sch. 10 para. 14(20)(a)** (with ss. 60, 101(1), 171, 201(3)).
- F107** Words in s. 400(4) substituted by Finance Act 1991 (c. 31, SIF 63:1), s. 73(3)-(5), **Sch. 15 para. 12**
- F108** Words in s. 400(4) substituted (with effect in accordance with s. 579(1) of the amending Act) by Capital Allowances Act 2001 (c. 2), **Sch. 2 para 35(2)** (with Sch. 3)
- F109** Words in s. 400(6) substituted (with effect in accordance with s. 579(1) of the amending Act) by Capital Allowances Act 2001 (c. 2), **Sch. 2 para 35(3)** (with Sch. 3)
- F110** Words in s. 400(6) substituted (6.3.1992 with effect as mentioned in s. 289(1)(2) of the amending Act) by Taxation of Chargeable Gains Act 1992 (c. 12), ss. 289, 290, **Sch. 10 para. 14(20)(b)** (with ss. 60, 101(1), 171, 201(3)).
- F111** Words in s. 400(6) substituted (31.7.1998) by Finance Act 1998 (c. 36), s. 46(3), **Sch. 7 para. 1**
- F112** Words in s. 400(7)(a) inserted (1.7.1999) by The Scotland Act 1998 (Consequential Modifications) (No. 2) Order 1999 (S.I. 1999/1820), art. 1(2), **Sch. 2 para. 87(2)(a)(i)** (with art. 5)
- F113** Words in s. 400(7)(b) inserted (1.7.1999) by The Scotland Act 1998 (Consequential Modifications) (No. 2) Order 1999 (S.I. 1999/1820), art. 1(2), **Sch. 2 para. 87(2)(a)(ii)** (with art. 5)
- F114** Words in s. 400(8)(9) inserted (1.7.1999) by The Scotland Act 1998 (Consequential Modifications) (No. 2) Order 1999 (S.I. 1999/1820), art. 1(2), **Sch. 2 para. 87(2)(b)** (with art. 5)
- F115** S. 400(9A) inserted (with effect in accordance with s. 105(1) of the amending Act) by Finance Act 1996 (c. 8), **Sch. 14 para. 19** (with Sch. 15)

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

- C48** S. 400 restricted (retrospective to 11.1.1994) by Finance Act 1994 (c. 9), s. 252(3), **Sch. 24 para. 16**
- C49** S. 400 excluded (1.4.2002) by The Scottish Water (Transfer of Functions, etc.) (Tax Provisions) Order 2002 (S.I. 2002/653), **art. 4(3)**
- C50** S. 400 modified (1.4.2002) by The Scottish Water (Transfer of Functions, etc.) (Tax Provisions) Order 2002 (S.I. 2002/653), **art. 4(4)**
- C51** S. 400(1) excluded (31.10.1994) by Coal Industry Act 1994 (c. 21), **ss. 20(2)**, 68(4) (with s. 40(7)); SI 1994/2552, art. 2, Sch.
- C52** S. 400(1) excluded (8.11.1995) by Atomic Energy Authority Act 1995 (c. 37), **Sch. 3 para. 12(1)**
- C53** S. 400(6) modified (31.10.1994) by Coal Industry Act 1994 (c. 21), **ss. 20(3)**, 68(4) (with s. 40(7)); SI 1994/2552, art. 2, Sch.

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- C54 S. 400(6) modified (8.11.1995) by Atomic Energy Authority Act 1995 (c. 37), Sch. 3 para. 12(2)
- C55 S. 400(7)(8) applied (with effect in accordance with s. 105(1) of the affecting Act) by Finance Act 1996 (c. 8), Sch. 9 para. 7(2) (with Sch. 15)

**Marginal Citations**

M33 Source—1981 s.48

**401 Relief for pre-trading expenditure.**

- (1)<sup>M34</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>F116</sup>seven] years before that time; and
  - (b) is not allowable as a deduction in computing his [<sup>F117</sup>profits] 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 [<sup>F118</sup>treated as incurred on the day on which the trade, profession or vocation is first carried on by him].

[<sup>F119</sup>(1A) <sup>F120</sup>.....]

[<sup>F121</sup>(1AA) Subsection (1) above shall not apply to any expenditure in relation to which any debit falls, or (but for subsection (1AB) below) would fall, to be brought into account for the purposes of Chapter II of Part IV of the Finance Act 1996 (loan relationships).

(1AB) Where, in the case of any company—

- (a) a non-trading debit is given for any accounting period for the purposes of Chapter II of Part IV of the Finance Act 1996 (loan relationships), and
- (b) an election for the purposes of this section is made by that company with respect to that debit within the period of 2 years beginning with the end of that accounting period,

that debit shall not be brought into account for the purposes of that Chapter as a non-trading debit for that period, but subsection (1AC) below shall apply instead.

(1AC) If a company—

- (a) begins to carry on a trade within the period of seven years after the end of the accounting period for which a non-trading debit is given for the purposes of Chapter II of Part IV of the Finance Act 1996 (loan relationships),
- (b) that debit is such that, if it had been given for the accounting period in which the company begins to carry on that trade, it would have been brought into account by reference to that trade in accordance with section 82(2) of that Act (trading debits and credits), and
- (c) an election is or has been made with respect to that debit under subsection (1AB) above,

that debit shall be treated for the purposes of that Chapter as if it were a debit for the accounting period in which the company begins to carry on the trade and shall be brought into account for that period in accordance with section 82(2) of that Act.]

[<sup>F122</sup>(1B) <sup>F123</sup>.....]

(2) <sup>F124</sup>.....

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### Textual Amendments

- F116** Word in s. 401(1) substituted (27.7.1993 with effect as mentioned in s. 109(4) of the amending Act) by virtue of s. 109(1)(4)
- F117** Words in s. 401(1)(b) substituted (31.7.1998) by [Finance Act 1998 \(c. 36\)](#), s. 46(3), [Sch. 7 para. 1](#)
- F118** Words in s. 401(1) substituted (with effect in accordance with s. 120(2) of the amending Act) by [Finance Act 1995 \(c. 4\)](#), [s. 120\(1\)\(a\)](#)
- F119** S. 401(1A) inserted (27.7.1993 with effect as mentioned in s. 109(4) of the amending Act) by 1993 c. 34, [s. 109\(2\)\(4\)](#)
- F120** S. 401(1A) repealed (with effect in accordance with s. 105(1) of the repealing Act) by [Finance Act 1996 \(c. 8\)](#), Sch. 14 para. 20(2), [Sch. 41 Pt. 5\(3\)](#), Note (with Sch. 15)
- F121** S. 401(1AA)-(1AC) inserted (with effect in accordance with s. 105(1) of the amending Act) by [Finance Act 1996 \(c. 8\)](#), [Sch. 14 para. 20\(1\)](#) (with Sch. 15)
- F122** S. 401(1B) inserted (with effect in accordance with s. 39(4)(5) of the amending Act) by [Finance Act 1995 \(c. 4\)](#), [Sch. 6 para. 20](#)
- F123** S. 401(1B) repealed (with effect in accordance with s. 38(2)(3) of the repealing Act) by [Finance Act 1998 \(c. 36\)](#), [Sch. 27 Pt. 3\(4\)](#), Note
- F124** S. 401(2) repealed (with effect in accordance with s. 120(2) of the repealing Act) by [Finance Act 1995 \(c. 4\)](#), s. 120(1)(b), [Sch. 29 Pt. 8\(15\)](#), Note 2

### Modifications etc. (not altering text)

- C56** S. 401 excluded (with effect in accordance with s. 69(1) of the excluding Act) by [Finance Act 2000 \(c. 17\)](#), Sch. 20 paras. 1(3), [26](#)
- C57** S. 401 excluded (with effect in accordance with s. 53(1) of the excluding Act) by [Finance Act 2002 \(c. 23\)](#), [Sch. 12 para. 20\(1\)](#)
- C58** S. 401 excluded (with effect in accordance with Sch. 13 para. 28(1)(2) of the excluding Act) by [Finance Act 2002 \(c. 23\)](#), [Sch. 13 para. 15\(3\)](#)
- C59** S. 401 excluded (with effect in accordance with s. 56 of the excluding Act) by [Finance Act 2002 \(c. 23\)](#), [Sch. 15 para. 2\(2\)](#)

### Marginal Citations

- M34** Source—1980 s.39(1), (2), (4); 1982 s.50

## CHAPTER IV

### GROUP RELIEF

### Modifications etc. (not altering text)

- C60** 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)*.
- C61** Pt. 10 Ch. 4 modified (27.7.1999) by [Commonwealth Development Corporation Act 1999 \(c. 20\)](#), Sch. 3 paras. 1, [5\(1\)](#)
- C62** Pt. 10 Ch. 4: [The Pension Protection Fund \(Tax\) Regulations 2006 \(S.I. 2006/575\)](#), [reg. 35](#) to be construed as one with this Chapter (6.4.2006) by virtue of regs. 1, 35(2) of that affecting S.I.

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

(1) <sup>M35</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.

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

(3) <sup>M36</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”.

[<sup>F125</sup>(3A) Group relief is not available unless the following condition is satisfied in the case of both the surrendering company and the claimant company.

(3B) The condition is that the company is resident in the United Kingdom or is a non-resident company carrying on a trade in the United Kingdom through a [<sup>F126</sup>permanent establishment].]

(4) A consortium claim shall not be made <sup>F127</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>M37</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



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them as respects an amount surrendered by way of group relief, being a payment not exceeding that amount.

#### Textual Amendments

- F125** S. 402(3A)(3B) inserted (with effect in accordance with Sch. 27 para. 6(1)(4) of the amending Act) by Finance Act 2000 (c. 17), **Sch. 27 para. 1**
- F126** Words in s. 402(3B) substituted (with effect in accordance with s. 153(4) of the amending Act) by Finance Act 2003 (c. 14), **s. 153(1)(a)**
- F127** 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)

- C63** S. 402(1)(2)(5)(6) applied (with modifications) (31.3.2001 with effect in accordance with reg. 1(2) of the affecting Regulations) by The Double Taxation Relief (Surrender of Relievable Tax Within a Group) Regulations 2001 (S.I. 2001/1163), **reg. 10**
- C64** S. 402(3) restricted (27.7.1999) by Commonwealth Development Corporation Act 1999 (c. 20), Sch. 3 paras. 1, **5(2)**
- C65** S. 402(3) restricted (with effect in accordance with s. 69(1) of the restricting Act) by Finance Act 2000 (c. 17), **Sch. 20 para. 22** (with Sch. 20 para. 26)

#### Marginal Citations

- M35** Source—1970 s.258(1)
- M36** Source—1970 s.258(2); 1981 s.40(2); 1985 Sch.9 5, 6
- M37** Source—1970 s.258(3), (4)

### <sup>F128</sup>**403 Losses etc. which may be surrendered by way of group relief.**

- (1) If in an accounting period (the “surrender period”) the surrendering company has—
- trading losses, excess capital allowances or a non-trading deficit on its loan relationships, or
  - charges on income, Schedule A losses [<sup>F129</sup>, management expenses or a non-trading loss on intangible fixed assets] available for group relief,

the amount may, subject to the provisions of this Chapter, be set off for the purposes of corporation tax against the total profits of the claimant company for its corresponding accounting period.

- (2) Trading losses, excess capital allowances and a non-trading deficit on the company’s loan relationships are eligible for surrender as group relief even if the surrendering company has other profits of the surrender period against which they could be set.

Further provision about relief in respect of amounts eligible for surrender under this subsection is contained in sections 403ZA to 403ZC.

- (3) Charges on income, Schedule A losses [<sup>F130</sup>management expenses and a non-trading loss on intangible fixed assets] are available for surrender as group relief only to the extent that in aggregate they exceed the surrendering company’s gross profits for the surrender period.

Any excess surrendered shall be taken to consist first of charges on income, then Schedule A losses [<sup>F131</sup>, management expenses and finally a non-trading loss on intangible fixed assets].

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Further provision about relief in respect of amounts available for surrender under this subsection is contained in section 403ZD.

- (4) This section has effect subject to—
- section 404 (limitation of group relief in relation to certain dual resident companies), and
  - sections 492(8) and 494A (oil extraction activities: availability of group relief against ring fence profits).]

#### Textual Amendments

- F128** 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)
- F129** Words in s. 403(1)(b) substituted (24.7.2002) by Finance Act 2002 (c. 23), **Sch. 30 para. 2(1)(a)**
- F130** Words in s. 403(3) substituted (24.7.2002) by Finance Act 2002 (c. 23), **Sch. 30 para. 2(1)(b)**
- F131** Words in s. 403(3) substituted (24.7.2002) by Finance Act 2002 (c. 23), **Sch. 30 para. 2(1)(c)**

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

- C66** S. 403 applied by Finance Act 1996 (c. 8), **Sch. 8 para 2(2)** (as substituted (with effect in accordance with s. 38(2)(3) of the 1998 amending Act) by Finance Act 1998 (c. 36), Sch 5 para. 64(3) (with **Sch 5 para. 73**))
- C67** S. 403 modified (with effect in accordance with s. 38(2)(3) of the modifying Act) by Finance Act 1998 (c. 36), Sch. 5 paras. 75, 76
- C68** S. 403 excluded (with effect in accordance with s. 579(1) of the affecting Act) by Capital Allowances Act 2001 (c. 2), **ss. 260(7), 261** (with Sch. 3)
- C69** S. 403 modified (5.10.2004) by Energy Act 2004 (c. 20), **ss. 27(1)(b), 198(2)**; S.I. 2004/2575, art. 2(1), **Sch. 1**

#### [<sup>F132</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
  - (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).]

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#### Textual Amendments

**F132** 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)

#### [<sup>F132</sup>403ZA] **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 [<sup>F133</sup> for the surrender period to the extent that they are to be given effect under section 260 of the Capital Allowances Act (special leasing: excess allowance).]
- (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

**F132** 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)

**F133** Words in s. 403ZA(1) substituted (with effect in accordance with s. 579(1) of the amending Act) by Capital Allowances Act 2001 (c. 2), **Sch. 2 para 36** (with Sch. 3)

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

**C70** S. 403ZA(2) restricted (with effect in accordance with s. 579(1) of the restricting Act) by Capital Allowances Act 2001 (c. 2), s. **131(7)** (with Sch. 3 paras. 54, 55)

#### [<sup>F132</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>M38</sup>Finance Act 1996 applies.
- (2) [<sup>F134</sup> .....]

#### Textual Amendments

**F132** 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)

**F134** S. 403ZC(2) repealed (with effect in accordance with s. 82(2) of the repealing Act) by Finance Act 2002 (c. 23), Sch. 25 para. 45, **Sch. 40 Pt. 3(12)**, Note

#### Marginal Citations

**M38** 1996 c.8.

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**[<sup>F132</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.

- [ A non-trading loss on intangible fixed assets means a non-trading loss on intangible
- <sup>F135</sup>(6) fixed assets, within the meaning of Schedule 29 to the Finance Act 2002, for the surrender period.

It does not include so much of any such loss as is attributable to an amount being carried forward under paragraph 35(3) of that Schedule (amounts carried forward from earlier periods).]]

**Textual Amendments**

**F132** 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)

**F135** S. 403ZD(6) inserted (24.7.2002) by Finance Act 2002 (c. 23), Sch. 30 para. 2(2)

**[<sup>F132</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).

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- (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

**F132** 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**)

#### [<sup>F136</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 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;

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- (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 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—



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- (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 [<sup>F137</sup>and the condition specified in section 402(3B) is satisfied in the case of both companies]; and
  - (b) if the claim is a consortium claim, whenever the conditions specified in section 402(3) for the making of that claim [<sup>F138</sup>and the condition specified in section 402(3B)] are satisfied in the case of the claimant company and the surrendering company.]

#### Textual Amendments

**F136** 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**

**F137** Words in s. 403A(10)(a) inserted (with effect in accordance with Sch. 27 para. 6(4) of the amending Act) by Finance Act 2000 (c. 17), **Sch. 27 para. 3(a)** (with Sch. 27 para. 6(1))

**F138** Words in s. 403A(10)(b) inserted (with effect in accordance with Sch. 27 para. 6(4) of the amending Act) by Finance Act 2000 (c. 17), **Sch. 27 para. 3(b)** (with Sch. 27 para. 6(1))

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

**C71** 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**)

#### [<sup>F136</sup>403BA] 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—

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- (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

**F136** 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)

**C72** 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)

#### [<sup>F136</sup>][<sup>F139</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.
- (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;

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- (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.]]

#### Textual Amendments

**F136** 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

**F139** S. 403C substituted (retrospectively) by Finance Act 2000 (c. 17), s. 100(1)(5)

#### [<sup>F140</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.

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- (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 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**

**F140** 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

*Status:* Point in time view as at 10/07/2003. This version of this part contains provisions that are not valid for this point in time.

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### **[<sup>F140</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 [<sup>F141</sup>permanent establishment] 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 [<sup>F141</sup>permanent establishment] 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 [<sup>F141</sup>permanent establishment] is situated, is (in any period) deductible from or otherwise allowable against non-UK profits of a person other than the resident company.
- (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 [<sup>F141</sup>permanent establishment] 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 [<sup>F141</sup>permanent establishment], and
  - (b) by the application in relation to that [<sup>F141</sup>permanent establishment] 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 [<sup>F141</sup>permanent establishment] of a non-resident company.
- (5) In subsection (4)(b) above the reference to the UK [<sup>F141</sup>permanent establishment] of a non-resident company is a reference to any [<sup>F141</sup>permanent establishment] 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 [<sup>F141</sup>permanent establishment] of a company are references to any [<sup>F141</sup>permanent establishment] 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**

**F140** 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

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**F141** Words in s. 403E(1)(a)(2)(4)(5)(6) substituted (with effect in accordance with s. 153(4) of the amending Act) by Finance Act 2003 (c. 14), s. 153(1)(a)

VALID FROM 19/07/2006

**[<sup>F142</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.
- (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**

**F142** 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>F143</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—



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- (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.
  - (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

**F143** 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>M39</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—
  - <sup>F144</sup>(a) in which the trading loss or Schedule A loss is incurred; or
  - (aa) in which the non-trading deficit on the company’s loan relationships arises; 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;

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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
  - (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;
  - [<sup>F145</sup>(ia) making payments in relation to which, being payments under loan relationships, any debits fall to be brought into account for the purposes of Chapter II of Part IV of the Finance Act 1996;]
  - (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

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(c) <sup>F146</sup> .....

[<sup>F147</sup>(7) In this section “debtor relationship” has the same meaning as in Chapter II of Part IV of the Finance Act 1996.]

#### Textual Amendments

- F144** S. 404(2)(a)(aa) substituted for s. 404(2)(a) (with effect in accordance with s. 38(2)(3) of the amending Act) by Finance Act 1998 (c. 36), Sch. 5 para. 37(2) (with Sch. 5 para. 73)
- F145** S 404(6)(a)(ia) inserted (with effect in accordance with s. 105(1) of the amending Act) by Finance Act 1996 (c. 8), Sch. 14 para. 21(1)(a) (with Sch. 15)
- F146** S. 404(6)(c) repealed (with effect in accordance with s. 38(2)(3) of the repealing Act) by Finance Act 1998 (c. 36), Sch. 5 para. 37(3), Sch. 27 Pt. 3(4), Note (with Sch. 5 para. 73)
- F147** S. 404(7) inserted (with effect in accordance with s. 105(1) of the amending Act) by Finance Act 1996 (c. 8), Sch. 14 para. 21(2) (with Sch. 15)

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

- C73** S. 404 applied (with modifications) (31.3.2001 with effect in accordance with reg. 1(2) of the modifying S.I.) by The Double Taxation Relief (Surrender of Relievable Tax Within a Group) Regulations 2001 (S.I. 2001/1163), reg. 10
- C74** 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.

#### Marginal Citations

- M39** Source—1987 (No.2) s.63

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

- (1) <sup>M40</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>M41</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

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- (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 [<sup>F148</sup>which an amount may by virtue of that claim be set off by way of group relief] 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.

#### Textual Amendments

**F148** Words in s. 405(4) substituted (with effect in accordance with Sch. 7 para. 9 of the amending Act) by Finance (No. 2) Act 1997 (c. 58), Sch. 7 para. 4

#### Marginal Citations

**M40** Source—1985 Sch.9 2  
**M41** Source—1985 Sch.9 3

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

- (1) <sup>M42</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>M43</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 [<sup>F149</sup>the relevant fraction for the purposes of section 403C] where a group member is the claimant company shall be the same as [<sup>F150</sup>it would be] if the link company were the claimant company.
- [<sup>F151</sup>(3) Sections 403A to 403C shall have effect in relation to a consortium claim made by a group member by virtue of subsection (2) above as if any time when the claimant company was not a member of the group—

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- (a) were not comprised in the period which is the overlapping period in the case of that claim; and
  - (b) were to be treated instead as if it constituted a part of the claim period which did not coincide with any part of the accounting period of the surrendering company to which the claim relates.]
- (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>M44</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 [<sup>F149</sup>the relevant fraction for the purposes of section 403C] in relation to a consortium claim made by virtue of subsection (5) above shall be the same as [<sup>F150</sup>it would be] if the link company were the surrendering company, except that the [<sup>F152</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.
- [<sup>F153</sup>(7) Sections 403A to 403C shall have effect in relation to a consortium claim made by a consortium company by virtue of subsection (5) above as if any time when the surrendering company was not a member of the group—
- (a) were not comprised in the period which is the overlapping period in the case of that claim; and
  - (b) were to be treated instead as if it constituted a part of the claim period that did not coincide with any part of the accounting period of the surrendering company to which the claim relates.]
- (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 [<sup>F154</sup>the maximum amount of relief available to the claimant company] 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

- F149** Words in s. 406(2)(6) substituted (with effect in accordance with Sch. 7 para. 9 of the amending Act) by Finance (No. 2) Act 1997 (c. 58), **Sch. 7 para. 5(1)(a)**
- F150** Words in s. 406(2)(6) substituted (with effect in accordance with Sch. 7 para. 9 of the amending Act) by Finance (No. 2) Act 1997 (c. 58), **Sch. 7 para. 5(1)(b)**
- F151** S. 406(3) substituted (with effect in accordance with Sch. 7 para. 9 of the amending Act) by Finance (No. 2) Act 1997 (c. 58), **Sch. 7 para. 5(2)**
- F152** Words in s. 406(6) substituted (retrospectively) by Finance Act 2000 (c. 17), **s. 100(2)(5)**

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**F153** S. 406(7) substituted (with effect in accordance with Sch. 7 para. 9 of the amending Act) by Finance (No. 2) Act 1997 (c. 58), **Sch. 7 para. 5(3)**

**F154** Words in s. 406(8) substituted (with effect in accordance with Sch. 7 para. 9 of the amending Act) by Finance (No. 2) Act 1997 (c. 58), **Sch. 7 para. 5(4)**

#### Marginal Citations

**M42** Source—1985 Sch.9 5(1), 6(1)

**M43** Source—1985 Sch.9 5(2)-(4)

**M44** Source—1985 Sch.9 6(2)-(5)

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

(1) <sup>M45</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>M46</sup>as reduced by any other relief from tax (including relief in respect of charges on income under section 338(1) [<sup>F155</sup>of this Act or by virtue of section 83 of, or paragraph 4 of Schedule 11 to, the Finance Act 1996 (non-trading deficits)]) determined on the assumption that the company makes all relevant claims under section [<sup>F156</sup>393A(1)] of this Act and [<sup>F157</sup>section 260(3) of the Capital Allowances 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>M47</sup>relief under section [<sup>F158</sup>393A(1)(b)] in respect of a loss incurred in an accounting period after the accounting period the profits of which are being computed; and
- (b) <sup>M48</sup>relief under [<sup>F159</sup>section 260(3) of the Capital Allowances 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; [<sup>F160</sup>and]
- <sup>F161</sup>[<sup>F162</sup>(c) relief in pursuance of a claim under section 83(2) of, or paragraph 4 of Schedule 11 to, the Finance Act 1996 (non-trading deficits) in respect of any deficit for a deficit period after the accounting period the profits of which are being computed.]]

(3) <sup>M49</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

**F155** Words in s. 407(1)(b) inserted (with effect in accordance with s. 105(1) of the amending Act) by Finance Act 1996 (c. 8), **Sch. 14 para. 22(1)** (with Sch. 15)

**F156** Words in s. 407(1)(b) substituted by Finance Act 1991 (c. 31, SIF 63:1), s. 73(3)-(5), **Sch. 15 para. 14(1)**

**F157** Words in s. 407(1)(b) substituted (with effect in accordance with s. 579(1) of the amending Act) by Capital Allowances Act 2001 (c. 2), **Sch. 2 para. 37(1)** (with Sch. 3)

**F158** Words in s. 407(2)(a) substituted by Finance Act 1991 (c. 31, SIF 63:1), s. 73(3)-(5), **Sch. 15 para. 14(2)**



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- F159** Words in s. 407(2)(b) substituted (with effect in accordance with s. 579(1) of the amending Act) by Capital Allowances Act 2001 (c. 2), **Sch. 2 para. 37(2)** (with Sch. 3)
- F160** Word in s. 407(2) inserted (27.7.1993 ) by 1993 c. 34, s. 170, **Sch. 18 para.4**
- F161** S. 407(2)(c) and words inserted (27.7.1993) by 1993 c. 34, s. 170, **Sch. 18 para.4**
- F162** S. 407(2)(c) substituted for para. (c) and words following it (with effect in accordance with s. 105(1) of the amending Act) by Finance Act 1996 (c. 8), **Sch. 14 para. 22(2)** (with Sch. 15)

#### Marginal Citations

- M45** Source—1970 s.260(1)
- M46** Source—1970 s.260(1), (2)
- M47** Source—1970 s.260(3)(a), (d)
- M48** Source—1970 s.260(3)(b)
- M49** Source—1970 s.260(4)

### 408 Corresponding accounting periods.

**F163** .....

#### Textual Amendments

- F163** Ss. 408, 409 repealed (with effect in accordance with Sch. 7 para. 9, Sch. Pt. 2(14) Note of the repealing Act) by Finance (No. 2) Act 1997 (c. 58), Sch. 7 para. 6, **Sch. 8 Pt. 2(14)**

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

**F164** .....

#### Textual Amendments

- F164** Ss. 408, 409 repealed (with effect in accordance with Sch. 7 para. 9, Sch. Pt. 2(14) Note of the repealing Act) by Finance (No. 2) Act 1997 (c. 58), Sch. 7 para. 6, **Sch. 8 Pt. 2(14)**

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

- (1) <sup>M50</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

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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

(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—

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“arrangements” means arrangements of any kind whether in writing or not;  
“connected persons” shall be construed in accordance with section 839  
[<sup>F165</sup>but as if subsection (7) of that section (persons acting together to control a company are connected) were omitted]; 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>M51</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.

#### Textual Amendments

**F165** Words in s. 410(5) inserted (19.3.1997) by [Finance Act 1997 \(c. 16\), s. 68](#)

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

- C75** S. 410 restricted (retrospective to 5.11.1993) by [Finance Act 1994 \(c. 9\), s. 252\(2\), Sch. 24 para. 17](#)
- C76** 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.](#)
- C77** S. 410 restricted (19.7.1995) by [Crown Agents Act 1995 \(c. 24\) s. 7\(2\)](#)
- C78** S. 410 restricted (6.11.2000) by [Postal Services Act 2000 \(c. 26\), s. 130\(1\), Sch. 4 para. 5](#); [S.I. 2000/2957, art. 2\(1\), Sch. 1](#)
- C79** S. 410 restricted (1.4.2002) by [The Scottish Water \(Transfer of Functions, etc.\) \(Tax Provisions\) Order 2002 \(S.I. 2002/653\), art. 5](#) (with art. 6)
- C80** S. 410(1)(2) restricted (8.11.1995) by [Atomic Energy Authority Act 1995 \(c. 37\), Sch. 3 para. 8\(1\)](#)
- C81** 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))
- C82** S. 410(1)(4)(5)-(7) applied (with modifications) (31.3.2001 with effect in accordance with reg. 1(2) of the affecting S.I.) by [The Double Taxation Relief \(Surrender of Relievable Tax Within a Group\) Regulations 2001 \(S.I. 2001/1163\), reg. 10](#)
- C83** 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

- M50** Source—1973 s.29, 32(6); 1981 s.40(6)
- M51** Source—1981 s.47

## 411 Exclusion of double allowances.

- (1) <sup>M52</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.

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- (2) <sup>F166</sup> .....
- (3) <sup>F166</sup> .....
- (4) <sup>F166</sup> .....
- (5) <sup>F166</sup> .....
- (6) <sup>F166</sup> .....
- (7) <sup>F166</sup> .....
- (8) <sup>F166</sup> .....
- (9) <sup>F166</sup> .....
- (10) <sup>F167</sup> . . . Any reference in [<sup>F168</sup>the Capital Allowances Act, except Parts 6 and 10], 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**

**F166** S. 411(2)-(9) repealed (with effect in accordance with Sch. 7 para. 6, Sch. 8 Pt. 2(14) Note of the repealing Act) by [Finance \(No. 2\) Act 1997 \(c. 58\)](#), Sch. 7 para. 6, **Sch. 8 Pt. 2(14)**

**F167** Words in s. 411(10) repealed (with effect in accordance with s. 579(1) of the repealing Act) by [Capital Allowances Act 2001 \(c. 2\)](#), Sch. 2 para. 38(a), **Sch. 4** (with Sch. 3)

**F168** Words in s. 411(10) substituted (with effect in accordance with s. 579(1) of the amending Act) by [Capital Allowances Act 2001 \(c. 2\)](#), **Sch. 2 para. 38(b)** (with Sch. 3)

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

**C84** S. 411(1) applied (with modifications) (31.3.2001 with effect in accordance with reg. 1(2) of the affecting S.I.) by [The Double Taxation Relief \(Surrender of Relievable Tax Within a Group\) Regulations 2001 \(S.I. 2001/1163\)](#), **reg. 10**

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**Marginal Citations**

**M52** Source—1970 s.263(1),(2)

VALID FROM 01/04/2009

**[<sup>F169</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.]

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#### Textual Amendments

**F169** 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)

**C85** 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>F170</sup> **411A** Group relief by way of substitution for loss relief.

<sup>F171</sup> .....

#### Textual Amendments

**F170** S. 411A inserted (with effect in accordance with s. 101(2) of the amending Act) by Finance Act 1990 (c. 29), **s. 101(1)**

**F171** S. 411A repealed (with effect in accordance with s. 93(2) of the repealing Act) by Finance Act 1999 (c. 16), Sch. 11 para. 1, **Sch. 20 Pt. 3(21)**, Note

### [<sup>F172</sup> **412** Claims and adjustments.

- (1) Claims for group relief are dealt with in Part VIII of Schedule 18 to the Finance Act 1998.
- (2) Paragraph 76 of that Schedule provides for assessments or other adjustments where group relief has been given which is or has become excessive.]

#### Textual Amendments

**F172** S. 412 substituted (with effect in accordance with s. 117(4)(5) of the amending Act) by Finance Act 1998 (c. 36), **Sch. 19 para. 46**; S.I. 1998/3173, **art. 2**

### **413 Interpretation of Chapter IV.**

- (1) The following provisions of this section have effect for the interpretation of this Chapter.
- (2) <sup>M53</sup>In this Chapter—
  - “claimant company” has the meaning given by section 402(1);
  - [<sup>F173</sup>“company” means any body corporate;]
  - “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);

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[<sup>F174</sup>“non-resident company” means a company that is not resident in the United Kingdom;]

“relevant accounting period” means an accounting period beginning after 31st July 1985; and

“surrendering company” has the meaning given by section 402(1).

[<sup>F175</sup>(2A) 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 shall be taken to correspond to that accounting period of the surrendering company.]

(3) <sup>M54</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;
- (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>F176</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>F177</sup> . . .
- (c) <sup>F177</sup> . . . . .

(6) <sup>M55</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 [<sup>F178</sup>403ZA(3)], 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;



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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>M56</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>F179</sup> .....
- (9) <sup>F179</sup> .....
- (10) Schedule 18 shall have effect for supplementing this section.

#### Textual Amendments

- F173** S. 413(2): definition of "company" inserted (with effect in accordance with Sch. 27 para. 6(4) of the amending Act) by Finance Act 2000 (c. 17), Sch. 7 para. 2(1) (with Sch. 7 para. 6(1))
- F174** S. 413(2): definition of "non-resident company" inserted (with effect in accordance with Sch. 27 para. 6(4) of the amending Act) by Finance Act 2000 (c. 17), Sch. 7 para. 2(1) (with Sch. 7 para. 6(1))
- F175** S. 413(2A) 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. 7
- F176** Words in s. 413(5) 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
- F177** 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
- F178** Words in s. 413(6) substituted (with effect in accordance with s. 38(2)(3) of the amending Act) by Finance Act 1998 (c. 36), Sch. 5 para. 38 (with Sch. 5 para. 73)
- F179** S. 413(8)(9) repealed (retrospectively) by Finance Act 2000 (c. 17), s. 100(3)(b)(5), Sch. 40 Pt. 2(11), Note 2

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

- C86** S. 413(3) applied (with modifications) (6.4.2006) by The Pension Protection Fund (Tax) Regulations 2006 (S.I. 2006/575), regs. 1, 35
- C87** S. 413(6)(a) applied (retrospective to 5.11.1993) by Finance Act 1994 (c. 9), s. 252(2), Sch. 24 para. 17(7)

#### Marginal Citations

- M53** Source—1970 s.258; 1985 Sch.9 1
- M54** Source—1970 s.258(5)-(7)
- M55** Source—1970 s.258(8); 1984 s.46(2); 1985 Sch.9 1(a)
- M56** Source—1973 s.28(2)-(5); 1981 s.40(5)

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