



Income and Corporation Taxes Act 1988

1988 CHAPTER 1

PART X

LOSS RELIEF AND GROUP RELIEF

CHAPTER I

LOSS RELIEF: INCOME TAX

Trade etc. losses

380 Set-off against general income.

- (1) ^{M1}Where any person sustains a loss in any trade, profession, vocation or employment carried on by him either solely or in partnership, he may, by notice given within two years after the year of assessment, make a claim for relief from income tax on an amount of his income equal to the amount of the loss.
- (2) ^{M2}Subject to section 492(2), relief may be given under subsection (1) above in respect of a person's loss sustained in the last preceding year of assessment in any trade, profession, vocation or employment still carried on by him in the year for which the claim is made, in so far as relief in respect of that loss has not already been given under that subsection or otherwise; and where relief is claimed by virtue of this subsection it shall be given in priority to any relief under that subsection in respect of a loss sustained in the year for which the relief is claimed.
- (3) ^{M3}Where there is in any year of assessment a change on which a trade, profession or vocation is treated under section 113(1) as permanently discontinued, and a person engaged in carrying it on immediately before the change continues to be so engaged immediately afterwards, it shall, notwithstanding the discontinuance, be treated as the same trade, profession or vocation for the purposes of subsection (2) above, except as respects the computation of profits or gains and losses.

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- (4) ^{M4}This section applies in relation to losses sustained in the occupation of woodlands in respect of which a person has elected under [^{F1}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

- F1** 1988(F) Sch.6 para.8 from 15 March 1988. Previously “section 54”.

Modifications etc. (not altering text)

- C1** *Treatment of oil extraction activities—see Oil Taxation Acts.*
C2 *See 1988(F) s.148 and Sch.14 Part V regarding repeal of s.380(4) from 6 April 1993.*
C3 *See—1990(C) s.142—restriction of set off of first-year allowances.*

Marginal Citations

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

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

- (1) ^{M5}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 within two years after the year of assessment in which the loss is sustained, make a claim for relief under this section.
- (2) ^{M6}Subject to section 492 and this section, relief shall be given under subsection (1) above from income tax on an amount of the claimant’s income equal to the amount of the loss, being income for the three years of assessment last preceding that in which the loss is sustained, taking income for an earlier year before income for a later year.
- (3) ^{M7}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) ^{M8}Relief shall not be given under subsection (1) above in respect of a loss sustained in any period unless it is shown that the trade was carried on throughout that period on a commercial basis and in such a way that profits in the trade (or, where the carrying on of the trade forms part of a larger undertaking, in the undertaking as a whole) could reasonably be expected to be realised in that period or within a reasonable time thereafter.
- (5) Relief shall not be given under subsection (1) above in respect of a loss sustained by an individual in a trade if—
 (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.

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- (6) For the purposes of this section an individual carries on a trade whether he does so solely or in partnership; and (except as respects the computation of profits or gains and losses) an individual continues to carry on the same trade notwithstanding a change in the persons engaged in carrying it on if he is engaged in carrying it on immediately before and immediately after the change.
- (7)^{M9}This section applies, with the necessary modifications, in relation to a profession or vocation as it applies in relation to a trade.

Modifications etc. (not altering text)

- C4** See S.I. 1987 No.530 (in Part III Vol.5) regn. 15—*non-resident entertainers and sportsmen.*
- C5** See 1990(C) s.142—*restriction of set-off of first-year allowances.*

Marginal Citations

- M5** Source—1978 s.30(1)
- M6** Source—1978 s.30(2)
- M7** Source—1978 s.30(3)
- M8** Source—1978 s.30(4)-(6)
- M9** Source—1978 s.30(10)

382 Provisions supplementary to sections 380 and 381.

- (1)^{M10}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)^{M11}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^{F2}.

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

- (3)^{M12}Where relief under section 380 or 381 has been given to a person for any year of assessment, he shall not be entitled, in computing the amount of the assessment for any subsequent year, to a deduction of any portion of the amount in respect of which such relief has been obtained.
- (4) For the purposes of sections 380 and 381, the amount of a loss sustained in a trade, (including the occupation of woodlands in a case where section 380(4) applies), profession or vocation shall be computed in like manner as the profits or gains arising or accruing from the trade, profession or vocation are computed under the provisions of the Income Tax Acts applicable to Case I or II of Schedule D.

Textual Amendments

- F2** Repealed by 1988(F) s.148 and Sch.14 Part VIII for 1990-91 and subsequent years.

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Marginal Citations

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

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

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

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

- (1) ^{M13}Subject to the provisions of this section, any claim made under section 380 or 381 for relief in respect of a loss sustained by the claimant in any trade in any year of assessment (“the year of loss”) may require the amount of that loss to be determined as if an amount equal to the capital allowances for the year of assessment for which the year of loss is the basis year were to be deducted in computing the profits or gains or losses of the trade in the year of loss; and a claim may be so made notwithstanding that apart from those allowances the claimant has not sustained a loss in the trade in the year of loss.
- (2) Capital allowances for any year of assessment shall be taken into account by virtue of this section only if and so far as they are not required to offset balancing charges for the year; and, for the purposes of this subsection, the capital allowances for a year of assessment shall be treated as required to offset balancing charges for the year up to the amount on which the balancing charges fall to be made after deducting from that amount the amount (if any) of capital allowances for earlier years which is carried forward to that year and would, without the balancing charges, be non-effective in that year.
- (3) ^{M14}In the case of a claim under section 380, where the capital allowances taken into account by virtue of this section are those for the year of assessment for which the claim is made or for the preceding year (the year of loss being the basis year for that year itself, or the claim being made by way of carry-forward of the loss by virtue of section 380(2)) relief shall not be given by reference to those allowances in respect of an amount greater than the amount non-effective in the year for which the claim is made, or, in the case of allowances for the preceding year, the amount non-effective in both years.
- (4) ^{M15}In the case of a claim under section 381, where the capital allowances taken into account by virtue of this section are those for the year of loss, relief shall not be given by reference to those allowances in respect of an amount greater than the amount non-effective in that year.
- (5) ^{M16}For the purposes of this section—
 - (a) where the end of the basis period for a year of assessment (as defined in ^{F3}section 160 of the 1990 Act) falls in, or coincides with the end of, any year of assessment, that year is the basis year for the first-mentioned year of assessment, but so that, if a year of assessment would under the foregoing provision be the basis year both for that year itself and for another year of assessment, it shall be the basis year for the year itself and not for the other year;
 - (b) any reference to the capital allowances or balancing charges for a year of assessment shall be construed as a reference to those falling to be made in taxing the trade for that year (but not including, in the case of allowances, any part of the allowances for an earlier year carried forward under ^{F3}section 140(4) of the 1990 Act);

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- (c) any reference to an amount of capital allowances non-effective in a year shall be construed as referring to the amount to which, by reason of an insufficiency of profits or gains, effect cannot be given in taxing the trade for the year; and
 - (d) effect shall be deemed to be given in taxing the trade to allowances carried forward from an earlier year before it is given to allowances arising in a later year.
- (6)^{M17} Where, on a claim made by virtue of this section, relief is not given under section 380 or 381 for the full amount of the loss determined as mentioned in subsection (1) above, the relief shall be referred as far as may be to the loss sustained by the claimant in the trade rather than to the capital allowances in respect of the trade.
- (7)^{M18} Subject to subsection (8) below, where for any year of assessment relief is given under section 380 or 381 by reference to any capital allowances, then, for all the purposes of the Income Tax Acts, effect shall be deemed to have been given to those allowances up to the amount in respect of which relief is so given, as if (in accordance with [F⁴section 140(2) of the 1990 Act]) a deduction in respect thereof had been allowed in taxing the trade for that year, or—
 - (a) where relief is given under section 380, in the case of allowances for the following year, in taxing the trade for that following year;
 - (b) where relief is given under section 381, in the case of allowances for any later year, in taxing the trade for that later year;and any relief previously given for a subsequent year on the basis that effect had not been given to the allowances as aforesaid shall be adjusted where necessary by an assessment.
- (8)^{M19} Where in any year of assessment a trade is permanently discontinued, or is treated for the purposes of section 113 as permanently discontinued, and, immediately before the discontinuance, the trade was being carried on in partnership, then, notwithstanding subsection (7) above, for the purposes of any claim for relief made by virtue of section 385(5)(c) or 388 and relating to that discontinuance, effect shall not be deemed to have been given either—
 - (a) to any part of the capital allowances falling to be made in taxing the trade for that year by reason of relief given under section 380 or 381 by reference to those allowances; or
 - (b) to any part of the capital allowances falling to be made in taxing the trade for the preceding year by reason of relief so given by reference to them, in so far as that relief must be referred to the part of the allowances apportionable to the part of the year within 12 months of the discontinuance on an apportionment made by reference to the comparative lengths of the two parts of the year;but where the same partner claims relief both under section 380 or 381 and under section 385(5) or 388 in respect of the same allowances, the total amount for which relief is to be given to him by reference thereto shall not exceed the greater of the amounts for which, apart from any deficiency of income, relief might have been given under either section separately, and the total amount for which relief is to be given to all the partners under those sections in respect of any allowances shall not in any event exceed the amount of the allowances to which effect has not been given apart from those sections.
- (9)^{M20} Where a person claiming relief under section 380 or 381 has, since the end, where the claim is under section 380, of the year for which the claim is made, or, where the claim is under section 381, of the year of loss, carried on the trade in question in partnership, effect shall not be given to this section in relation to that claim except

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with the written consent of, or of the personal representatives of, every other person who has been engaged in carrying on the trade between the end of that year and the making of the claim.

- (10) ^{M21}Where the claim is for a loss sustained before an event treated as the permanent discontinuance of the trade, subsection (9) above shall not require the consent of any person as having been so engaged since that discontinuance, or as the personal representative of such a person.
- (11) Relief from tax may be given by virtue of this section by reference to capital allowances for a year of assessment before the passing of any Act granting income tax for that year, as if income tax had been granted for the year without alteration; but if relief given to a person by virtue of this section for any year of assessment is affected by a subsequent alteration of the law, or by any discontinuance of the trade or other event occurring after the end of the year, any necessary adjustment may be made, and so much of any repayment of tax as exceeded the amount repayable in the events that happened may, if not otherwise made good, be assessed under Case VI of Schedule D and recovered from that person accordingly.
- (12) ^{M22}This section applies (with any necessary adaptations)—
- (a) in the case of a claim under section 380, in relation to a profession, vocation or employment and in relation to the occupation of woodlands the profits or gains of which are assessable under Schedule D by virtue of an election under [^{F5}paragraph 4 of Schedule 6 to the Finance Act 1988]; and
 - (b) in relation to a claim under section 381, in relation to a profession or vocation, as it applies in relation to a trade.

Textual Amendments

- F3** 1990(C) s.164 and Sch.1 para.8(13)(a). *Previously* “section 72 of the 1968 Act”
and
“section 70(4) of the 1968 Act”
respectively.
- F4** 1990(C) s.164 and Sch.1 para.8(13)(b). *Previously* “section 70(2) of the 1968 Act”.
- F5** 1988(F) Sch.6 para.8 from 15 March 1988. *Previously* “section 54”; and see 1988(F) Sch.14 Part V for repeals from 6 April 1993.

Modifications etc. (not altering text)

- C6** See 1990(C) ss.30-31 (ships)—*carry-forward does not include postponement under ss.30-31.*

Marginal Citations

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

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M22 Source—1970 s.169(10); 1978 s.30(10)

384 Restrictions on right of set-off.

- (1) ^{M23}Subject to subsection (2) below, a loss (including any amount in respect of capital allowances which, by virtue of section 383, is to be treated as a loss) shall not be available for relief under section 380 unless it is shown that, for the year of assessment in which the loss is claimed to have been sustained, the trade was being carried on on a commercial basis and with a view to the realisation of profits in the trade or, where the carrying on of the trade formed part of a larger undertaking, in the undertaking as a whole.
- (2) Subsection (1) above shall not apply—
 - (a) to a loss made, or an allowance in respect of expenditure incurred, by any person in the exercise of functions conferred by or under any enactment (including an enactment contained in a local or private Act); or
 - (b) to an allowance in respect of expenditure incurred before 6th April 1960.
- (3) ^{M24}Where during a year of assessment there is a change in the manner in which a trade is being carried on, it shall be treated for the purposes of this section as having been carried on throughout the year in the way in which it was being carried on by the end of the year.
- (4) Subject to subsection (5) below, where a trade is (or falls to be treated as being) carried on for a part only of a year of assessment by reason of its being (or falling to be treated as being) set up and commenced, or discontinued, or both, in that year, subsections (1) to (3) above shall have effect in relation to the trade as regards that part of that year as if any reference to the manner of carrying on the trade for or by the end of that year were a reference to the manner of carrying it on for or by the end of that part of that year.
- (5) Where in any year of assessment there is a change in the persons engaged in carrying on a trade, then, for the purposes of the application of subsections (1) to (4) above in the case of any person who, being engaged in carrying on the trade immediately before the change, continues to be so engaged immediately after it, the trade carried on by that person immediately before the change shall be treated as continuing to be carried on by him notwithstanding the change, whether or not it falls to be treated for any other purpose as having been discontinued on the change.
- (6) ^{M25}There shall be disregarded for the purposes of section 383 any allowances made to an individual under Chapter I of Part III of the Finance Act 1971 in respect of expenditure incurred on the provision of machinery or plant for leasing in the course of a trade unless—
 - (a) the trade is carried on by him (alone or in partnership) for a continuous period of at least six months in, or beginning or ending in, the year of the loss (as defined in section 383); and
 - (b) he devotes substantially the whole of his time to carrying it on (alone or in partnership) throughout that year or if it is set up or permanently discontinued (or both) in that year, for a continuous period of at least six months beginning or ending in that year.
- (7) ^{M26}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

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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)^{M27} Where relief has been given in a case to which subsection (6) above applies it shall be withdrawn by the making of an assessment under Case VI of Schedule D.
- (9)^{M28} For the purposes of subsection (1) above, the fact that a trade was being carried on at any time so as to afford a reasonable expectation of profit shall be conclusive evidence that it was then being carried on with a view to the realisation of profits.
- (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;

[^{F6}and the Tax Acts shall have effect as if subsections (6) to (8) above were contained in Chapter V of Part II of the 1990 Act, and those subsections are without prejudice to section 142 of that Act.]

Textual Amendments

- F6** 1990(C) s.164 and Sch.1 para.8(14). *Previously*
 “and subsection (6) above is without prejudice to section 41 of the Finance Act 1976”.

Marginal Citations

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

VALID FROM 22/03/2001

[^{F7}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.

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- (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 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

- F7 S. 384A inserted (with effect in accordance with s. 579(1) of the amending Act) by [Capital Allowances Act 2001 \(c. 2\)](#), [Sch. 2 para. 30](#) (with [Sch. 3](#))

385 Carry-forward against subsequent profits.

- (1) ^{M29}Where a person has, in any trade, profession or vocation carried on by him either alone or in partnership, sustained a loss (to be computed in the same way as profits or gains under the provisions of the Income Tax Acts applicable to Cases I and II of Schedule D) in respect of which relief has not been wholly given either under section 380 or under any other provision of those Acts, he may make a claim requiring that any portion of the loss for which relief has not been so given shall be carried forward and, as far as may be, deducted from or set off against the amount of profits or gains on which he is assessed to income tax under Schedule D in respect of that trade, profession or vocation for subsequent years of assessment.
- (2) In the application of this section to a loss sustained by a partner in a partnership, “the amount of profits or gains on which he is assessed” shall, in respect of any year, be taken to mean such portion of the amount on which the partnership is assessed to income tax under Schedule D in respect of the trade, profession or vocation as he would be required to include in a return of his total income for that year.
- (3) ^{M30}Any relief under this section shall be given as far as possible from the first subsequent assessment, and so far as it cannot be so given, then from the next assessment, and so on.

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- (4) Where in any year of assessment relief cannot be given, or cannot be wholly given, in respect of a loss carried forward under this section because the amount of the profits or gains of the trade assessed under Case I of Schedule D for that year is insufficient, any interest or dividends being interest or dividends—
- (a) on investments arising in that year, and
 - (b) which would fall to be taken into account as trading receipts in computing the profits or gains of the trade for the purposes of assessment under that Case but for the fact that they have been subjected to tax under other provisions of the Income Tax Acts,
- shall be treated for the purposes of the application of this section as if they were profits or gains on which the person carrying on the trade was assessed under that Case in respect of that trade for that year of assessment, and relief shall be given accordingly by repayment or otherwise.
- (5) Where there is in any year of assessment a change on which a trade, profession or vocation is treated under section 113 as permanently discontinued, and a person engaged in carrying it on immediately before the change continues to be so engaged immediately thereafter, then—
- (a) the trade, profession or vocation carried on by him immediately before and that carried on immediately after the change shall, notwithstanding the discontinuance, be treated as the same for the purposes of this section, except as respects the computation of profits or gains and losses; and
 - (b) in respect of a loss sustained by him in the trade, profession or vocation in the part of that year before the change, relief shall be given under this section from the assessment relating to the part of the year after the change as if it were an assessment for a subsequent year; and
 - (c) for the purposes of this section, there shall be treated as a loss so sustained in the part of the year before the change his share of the non-effective amount (if any) of any capital allowances falling to be made in taxing the trade, profession or vocation for that part of that year.

For the purposes of paragraph (c) above—

- (i) the persons engaged in carrying on the trade, profession or vocation immediately before the change shall be treated as entitled to capital allowances in the shares in which they are then entitled to the profits of the trade, profession or vocation, and
 - (ii) “the non-effective amount” means, in relation to any such allowances, the amount to which, because of an insufficiency of profits or gains, effect cannot be given in taxing the trade, profession or vocation.
- (6) Where a loss is sustained by a person in the occupation of woodlands, and that person, if he had made a profit, would by reason of his election under [F8 paragraph 4 of Schedule 6 to the Finance Act 1988] have been chargeable for the following year to income tax under Schedule D computed on the amount of that profit, this section shall apply so as to give relief in respect of that loss in the same manner, and to the same extent, as if it were a loss sustained in a trade.
- (7) In so far as relief in respect of any loss has been given to any person under this section, that person shall not be entitled to claim relief in respect of that loss under any other provision of the Income Tax Acts.
- (8) So far as a claim under this section concerns the amount of the loss for any year of assessment it must be made within six years after the year of assessment in question,

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but the question whether any and if so how much relief on that amount should be given under this section against tax for any year of assessment may be the subject of a separate claim made not later than six years after that year of assessment.

Textual Amendments

F8 1988(F) Sch.6 para.6(8)from 15March 1988.Previously “section 54”.

Modifications etc. (not altering text)

C7 See 1988(F) Sch.14 Part V—repeal of subs. (6)from 6April 1993.

Marginal Citations

M29 Source—1970 s.171(1)

M30 Source—1970 s.171(2)-(7)

386 Carry-forward where business transferred to a company.

(1) ^{M31}Where—

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

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

- (2) Where under section 385 as applied by subsection (1) above a loss falls to be deducted from or set off against any income for any year of assessment, the deduction or set-off shall be made in the first place against that part, if any, of the income in respect of which the individual has been, or is liable to be, assessed to tax for that year.
- (3) This section, in its application to the year of assessment in which a business is transferred, shall have effect as if, for the reference in subsection (1)(b) to the year of assessment throughout which the individual is the beneficial owner of the shares and the business is carried on by the company, there were substituted a reference to the period from the date of the transfer to the following 5th April.
- (4) Where a change to which subsection (5) of section 385 applies has occurred before a transfer to which this section applies, paragraph (a), but not paragraph (c), of that subsection shall for the purposes of this section apply in relation to the earlier change as it applies for the purposes of that section.

Marginal Citations

M31 Source—1970 s.172

Status: Point in time view as at 01/02/1991. This version of this cross heading contains provisions that are not valid for this point in time.

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

- (1) ^{M32}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) ^{M33}to any payment falling within section 349(2);
 - (b) ^{M34}to any payment falling within section 349 by virtue of section 43(1);
 - (c) to any such payment of rent as is referred to in section 120(4);
 - (d) to any capital sum paid in respect of any patent rights assessed under section 349(1) by virtue of section 524;
 - (e) to any payment of, or on account of, copyright royalties to which section 536 applies [^{F9}or royalties in respect of a right in a design to which section 537B applies]; or
 - (f) to any payment to which section 349(1) applies by virtue of section 737.

Textual Amendments

F9 *Sch.7 para.36(4)Copyright, Designs and Patents Act 1988 (c.48)from 1August 1989. (Commencement order—S.I. 1989 No.816—not reproduced.)*

Marginal Citations

M32 Source—1970 s.173(1), (2)

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

M34 Source—1970 s.173(3)(a)-(c)

388 Carry-back of terminal losses.

- (1) ^{M35}Where a trade, profession or vocation is permanently discontinued in the year 1988-89 or any later year, and any person then carrying it on, either alone or in partnership, has sustained therein a loss to which this section applies (“a terminal loss”), that person may, subject to the provisions of this section and of section 389, make a claim requiring that the amount of the terminal loss shall, as far as may be, be deducted from or set off against the amount of profits or gains on which he has been charged to income tax under Schedule D in respect of the trade, profession or vocation for the three years of assessment last preceding that in which the discontinuance occurs; and there shall be made all such reductions of assessments or repayments of tax as may be necessary to give effect to the claim.
- (2) Relief shall not be given in respect of the same matter both under this section and under some other provision of the Income Tax Acts.
- (3) ^{M36}Any relief under this section shall be given as far as possible from the assessment for a later rather than an earlier year.

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(4) Where—

- (a) a claim under this section is made in respect of a terminal loss sustained in a trade, and
- (b) relief cannot be given, or cannot be wholly given, against the profits or gains of the trade charged to income tax under Schedule D for any year because the amount of those profits or gains is insufficient,

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

For the purposes of this subsection “any relevant interest or dividends” means interest or dividends which would fall to be taken into account as trading receipts in computing the profits or gains of the trade for the purpose of assessment under Case I of Schedule D but for the fact that they have been subjected to tax under other provisions of the Income Tax Acts.

- (5) The profits or gains on which a person or partnership has been charged to income tax for any year of assessment shall be treated for the purposes of any relief under this section from the assessment for that year as reduced by the amount of those profits or gains applied in making any payment from which income tax was deducted, but was not accounted for because the payment was made out of profits or gains brought into charge to income tax; and the like reduction shall be made in the amount of the terminal loss for which relief may be given under this section from the assessments for earlier years unless the payment was one which, if not made out of profits or gains brought into charge to income tax—

- (a) could have been assessed to income tax under section 350, and
- (b) if so assessed, could have been treated as a loss by virtue of section 387.

- (6) The question whether a person has sustained any and, if so, what terminal loss in a trade, profession or vocation shall be determined for the purposes of this section by taking the amounts (if any) of the following, in so far as they have not otherwise been taken into account so as to reduce or relieve any charge to tax—

- (a) the loss sustained by him in the trade, profession or vocation in the year of assessment in which it is permanently discontinued;
- (b) the relevant capital allowances for that year of assessment;
- (c) the loss sustained by him in the trade, profession or vocation in the part of the preceding year of assessment beginning 12 months before the discontinuance; and
- (d) the same fraction of the relevant capital allowances for that preceding year of assessment as the part thereof beginning 12 months before the discontinuance is of a year.

- (7) In subsection (6) above “the relevant capital allowances” means, in relation to any year of assessment, any capital allowances falling to be made in taxing the trade, profession or vocation for that year, excluding amounts carried forward from an earlier year; and for the purposes of paragraphs (a) and (c) of that subsection the amount of a loss shall, subject to the provisions of this section, be computed in the same way as profits or gains under the provisions of the Income Tax Acts applicable to Cases I and II of Schedule D.

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Modifications etc. (not altering text)

C8 See 1990(C) ss.30-31 (*ships*)—*carry forward does not include postponement under 1990(C) ss.30-31.*

Marginal Citations

M35 Source—1970 s.174(1)

M36 Source—1970 s.174(2)-(6)

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

- (1) ^{M37}Sections 387, 458 and 474 shall apply to the computation of losses, or of profit or loss, for any purpose of this section or section 388 as they apply to any such computation for the corresponding purposes of section 385.
- (2) Where on the permanent discontinuance of a trade which consists of or includes the working of a mine, oil well or other source of mineral deposits within the meaning of [^{F10}Part IV of the 1990 Act] , a claim for relief is made both under section 388 above and [^{F10}section 17(1) of the 1990 Act] (carry-back of balancing allowances), the balancing allowance in respect of which the claim is made under [^{F10}section 17(1)] shall be left out of account for the purposes of section 388(6), but relief under section 388 shall be given in priority to relief under [^{F10}section 17(1)].
- (3) Where a person claiming relief under section 388 on a discontinuance has, since the beginning of the third year of assessment preceding that in which the discontinuance occurs, carried on the trade, profession or vocation in partnership—
 - (a) in section 388(1) “the amount of profits or gains on which he has been charged to income tax” shall be taken to mean, in respect of any year or part of a year for which the partnership was assessed in respect of the trade, profession or vocation, such portion of the amount of the profits or gains on which the partnership has been, or is treated by virtue of section 388(5) as having been, charged to income tax in respect of it for that year or part of a year as would be required to be included in a return of his total income for that year;
 - (b) any reduction in the amount of his terminal loss which falls to be made under section 388(5) by reason of profits or gains having been applied by the partnership in any such year or part of a year in making any payment shall be limited to the same proportion of the profits or gains brought into charge which were so applied; and
 - (c) if he was carrying on the trade, profession or vocation immediately before the discontinuance, the amounts to be included in his terminal loss by virtue of section 388(6)(b) or (d) shall be such part only of the amounts therein mentioned (in so far as they have not otherwise been taken into account so as to reduce or relieve any charge to tax) as would fall to his share on a division made according to the shares in which the partners were then entitled to the profits of the trade, profession or vocation.
- (4) For all purposes of this section and section 388 a trade, profession or vocation shall be treated as discontinued, and a new one as set up and commenced, when it is so treated for the purposes of section 113; but—
 - (a) a person who continues to be engaged in carrying it on immediately after such a discontinuance shall not be entitled to relief in respect of any terminal loss on that discontinuance; and

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- (b) on any discontinuance, a person not continuing to be so engaged may be given relief in respect of a terminal loss against profits or gains on which he was charged in respect of the same trade, profession or vocation for a period before a previous discontinuance, if he has been continuously engaged in carrying it on between the two discontinuances, and, in his case, if the previous discontinuance occurred within 12 months before the other—
- (i) it shall be disregarded for the purposes of paragraphs (a) and (c) of section 388(6), except that those paragraphs shall be taken to include any amount on which relief could have been allowed to him as for a loss sustained before the previous discontinuance by virtue of section 385(5)(c), so far as it is referable to a period within those 12 months; and
 - (ii) paragraph (d) of section 388(6) shall be taken to include the whole amount of the allowances in question instead of the fraction there mentioned.
- (5) Where a trade, profession or vocation is being carried on by any persons in partnership immediately before it is permanently discontinued, relief under section 388 given to one of them on the discontinuance shall not, in relation to a claim made by another of them by virtue of paragraph (c) of section 385(5), be taken to affect the non-effective amount of any allowances within the meaning of that paragraph.
- (6) Subject to subsection (7) below, a claim for relief under section 388 may require that, in so far as they have not been otherwise taken into account so as to reduce or relieve any charge to tax, capital allowances in respect of the trade under [^{F11}the 1990 Act except Parts III, IV, V (other than section 122) and VII], being allowances which—
- (a) fall to be made to the claimant by way of discharge or repayment of tax, and
 - (b) fall to be so made for the year of assessment in which the discontinuance occurs or the preceding year of assessment,
- shall be added to the terminal loss sustained by him (or, if he has not sustained a terminal loss computed in accordance with the provisions of this section and section 388, shall be treated as a terminal loss so sustained), and the allowances to be taken into account for this purpose may include allowances arising before a previous discontinuance.
- (7) For the purposes of subsection (6) above—
- (a) there shall be taken into account such fraction only of the allowances for the preceding year of assessment referred to in that subsection as the part of that year beginning 12 months before the discontinuance giving rise to the claim is of a year; and
 - (b) the allowances for any year shall not be treated as including any amounts carried forward from an earlier year.
- ^{F12}(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

F10 1990(C) s.164 and Sch.1 para.8(15)(a). *Previously*
“Schedule 13 to the Finance Act 1986”, “section 15(1) of the 1968 Act”, “section 15(1)”

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and
 “section 15(1)”
respectively.

F11 1990(C) s.164*and* Sch.1 para.8(15)(b).*Previously*
 “Part I of the 1968 Act or Chapter I of Part III of the Finance Act 1971”.

F12 *See* 1988(F) Sch.14 Part V*for repeal of subs. (8)from 6April 1993.*

Marginal Citations

M37 Source—1970 s.174(7)-(13); 1986 Sch.13 27; 1971 Sch.8 16

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

^{M38}Where—

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

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

Marginal Citations

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

391 Losses from trade etc. carried on abroad.

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

Marginal Citations

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

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

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