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# Income and Corporation Taxes Act 1988

## 1988 CHAPTER 1

### PART X

#### LOSS RELIEF AND GROUP RELIEF

#### CHAPTER II

#### LOSS RELIEF: CORPORATION TAX

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

**C1** See s.434A—limitations on loss relief for life assurance company.

VALID FROM 31/07/1998

*Losses from Schedule A business or overseas property business*

**392A Schedule A losses.**

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

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period and be treated for the purposes of section 75 as if it had been disbursed as expenses of management for that period.

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

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

- C2 [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)**

- C3 [S. 392B](#) excluded (19.7.2006) by [Finance Act 2006 \(c. 25\)](#), s. 113(5), [Sch. 17 para. 12\(2\)](#)

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**C4** 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>M1</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>F1</sup>section 393A(1)], be relieved against income or profits of an earlier accounting period.

<sup>F2</sup>(2) .....

<sup>F2</sup>(3) .....

<sup>F2</sup>(4) .....

<sup>F2</sup>(4A) .....

<sup>F2</sup>(4B) .....

<sup>F2</sup>(5) .....

<sup>F2</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,

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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>F3</sup> . . . .

#### Textual Amendments

- F1** Words in s. 393(1) substituted by Finance Act 1991 (c. 31, SIF 63:1), s. 73(3)-(5), **Sch. 15 para. 8(a)**
- F2** 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**
- F3** 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)

- C5** 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)
- C6** 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)
- C7** 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)**
- C8** 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**
- C9** 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**
- C10** 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).
- C11** 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.
- C12** S. 393(1) modified (retrospective to 11.1.1994) by Finance Act 1994 (c. 9), s. 252(3), **Sch. 24 para. 15**
- C13** 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

- M1** Source—1970 s.177(1)-(3)

### [393A] <sup>F4</sup> Losses: set off against profits of the same, or an earlier, accounting period.

- (1) Subject to section 492(3), where in any accounting period ending on or after 1st April 1991 a company carrying on a trade incurs a loss in the trade, then, subject to subsection (3) below, the company may make a claim requiring that the loss be set off for the purposes of corporation tax against profits (of whatever description)—
- (a) of that accounting period, and
  - (b) if the company was then carrying on the trade and the claim so requires, of preceding accounting periods falling wholly or partly within the period specified in subsection (2) below;

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and, subject to that subsection and to any relief for an earlier loss, the profits of any of those accounting periods shall then be treated as reduced by the amount of the loss, or by so much of that amount as cannot be relieved under this subsection against profits of a later accounting period.

- (2) The period referred to in paragraph (b) of subsection (1) above is the period of three years immediately preceding the accounting period in which the loss is incurred; but the amount of the reduction that may be made under that subsection in the profits of an accounting period falling partly before the beginning of that period shall not exceed a part of those profits proportionate to the part of the accounting period falling within that period.
- (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) <sup>[F5]</sup>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—
  - <sup>[F6]</sup>(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) A claim under subsection (1) above may require that capital allowances in respect of the trade, being allowances that fall—
  - (a) to be made to the company by way of discharge or repayment of tax, and
  - (b) to be so made for an accounting period ending on or after 1st April 1991,shall (so far as they cannot be otherwise taken into account so as to reduce or relieve any charge to corporation tax in respect of that, or any earlier, accounting period) be added to the loss incurred by the company in that accounting period or, if the company has not incurred a loss in the period, shall be treated as a loss so incurred.
- (6) For the purposes of subsection (5) above, the allowances for any period shall not be treated as including amounts carried forward from an earlier period.
- (7) Where a company ceases to carry on a trade, subsection (9) of section 393 shall apply in computing for the purposes of this section a loss in the trade in the accounting period in which the cessation occurs as it applies in computing a loss in an accounting period for the purposes of subsection (1) of that section.
- (8) Relief shall not be given by virtue of subsection (1)(b) above in respect of a loss incurred in a trade so as to interfere with any relief under section 338 in respect of payments made wholly and exclusively for the purposes of that trade.
- (9) For the purposes of this section—

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

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

#### Textual Amendments

- F4** S. 393A inserted by Finance Act 1991 (c. 31, SIF 63:1), s. 73(1)(4)(5)
- F5** 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)
- F6** 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)

VALID FROM 21/07/2008

#### [<sup>F7</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

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- (c) the loss incurred in the ring fence trade that may be set off under section 393A (“L”) exceeds the profits against which L may be set off under section 393A (“P”).
- (2) The profits of the ring fence trade of an accounting period are to be relieved under subsection (3) if that period—
  - (a) falls wholly or partly before the three year set off period, and
  - (b) ends on or after 17 April 2002.
- (3) Subject to any relief for an earlier loss, those profits of that accounting period shall be treated as reduced by—
  - (a) the amount by which L exceeds P, or
  - (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**

**F7** S. 393B inserted (with effect in accordance with s. 111(3) of the amending Act) by [Finance Act 2008 \(c. 9\), s. 111\(1\)](#)

**F8 394 Terminal losses.**

**Textual Amendments**

**F8** S. 394 repealed by [Finance Act 1991 \(c. 31\), ss. 73\(2\)\(4\)\(5\), 123, Sch. 19 Pt. V](#)

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### 395 Leasing contracts and company reconstructions.

- (1) Subject to the provisions of this section, if—<sup>M2</sup>
- (a) under a contract entered into on or after 6th March 1973 a company (“the first company”) incurs capital expenditure on the provision of machinery or plant which the first company lets to another person by another contract (a “leasing contract”); and
  - (b) apart from this subsection, the first company would be entitled [<sup>F9</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
  - (c) in the accounting period for which a first-year allowance, [<sup>F10</sup>within the meaning of Part II of the 1990 Act], in respect of the expenditure referred to in paragraph (a) above is made to the first company, arrangements are in existence by virtue of which, at some time during or after the expiry of that accounting period, a successor company will be able to carry on any part of the first company’s trade which consists of or includes the performance of all or any of the obligations which, apart from the arrangements, would be the first company’s obligations under the leasing contract,
- then, in the accounting period specified in paragraph (c) above and in any subsequent accounting period, the first company shall not be entitled <sup>F11</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>F11</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

- F9** Words in s. 395(1)(b) substituted (27.7.1993) by 1993 c. 34, s. 120, **Sch. 14 para. 8(3)(a)**
- F10** 1990(C) s.164 and Sch.1 para.8(17). *Previously* “within the meaning of Chapter I of Part III of the Finance Act 1971”.
- F11** 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)**



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#### Marginal Citations

**M2** Source—1973 ss.30, 32(6)

### Case VI losses

#### 396 Case VI losses.

- (1) <sup>M3</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)

- C14** 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
- C15** 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)
- C16** 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)
- C17** See 1990 ss.99(3)and (4)and 132and Sch.19 Part Vfor 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

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**M3** Source—1970 s.179

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