



Income and Corporation Taxes Act 1988

1988 CHAPTER 1

PART X

LOSS RELIEF AND GROUP RELIEF

CHAPTER III

LOSS RELIEF: MISCELLANEOUS PROVISIONS

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

- (1) ^{M1}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 [^{F1}, computed without regard to capital allowances,] was incurred in carrying on that trade; ^{F2}
- (2) Any loss incurred in any accounting period by a company in carrying on a trade of farming or market gardening shall be excluded from section 393(2) if a loss, computed without regard to capital allowances, was incurred in carrying on that trade in that accounting period, and in each of the chargeable periods wholly or partly comprised in the prior five years.
- (3) Subsections (1) and (2) above shall not restrict relief for any loss or for any capital allowance [^{F3} in any case]—
 - (a) [^{F4} where] the whole of the farming or market gardening activities in the year next following the prior five years are of such a nature, and carried on in such a way, as would have justified a reasonable expectation of the realisation of profits in the future if they had been undertaken by a competent farmer or market gardener, but
 - (b) [^{F4} where], if that farmer or market gardener had undertaken those activities at the beginning of the prior period of loss, 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.

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- (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—
- “basis year”, in relation to any capital allowance, shall be construed in accordance with section 383(5)(a);
- “chargeable period”, in relation to a company, means any accounting period, or any basis period ending before its first accounting period, “basis period” having the meaning given by [F5section 160 of the 1990 Act];
- “prior five years”—
- (a) in relation to a loss incurred in a year of assessment, means the last five years of assessment before that year, and
- (b) in relation to a loss incurred in a company’s accounting period, means the last five years before the beginning of the accounting period;
- “prior period of loss” means the prior five years, except that, if losses were incurred in the trade in successive years of assessment or chargeable periods amounting in all to a period longer than five years (and ending when the prior five years end), it means that longer period, and in applying this definition to a chargeable period of a company “losses” means losses computed without regard to capital allowances; and
- “farming” and “market gardening” shall be construed in accordance with the definitions of those terms in section 832, but as if those definitions were not restricted to activities in the United Kingdom.
- (6) For the purposes of this section, a capital allowance is related to a loss incurred in a trade if it falls to be made in taxing that trade and its basis year is the year of assessment in which the loss was incurred.
- (7) In ascertaining for the purposes of this section whether a loss was incurred in any part of the prior five years or earlier, the rules applicable to Case I of Schedule D shall be applied; and in this section “loss computed without regard to capital allowances” means, in relation to a chargeable period of a company, a loss so ascertained, but so that, notwithstanding [F6section 144(2) of the 1990 Act], no account shall be taken of any allowance or charge under any of the Capital Allowances Acts.
- (8) Subsections (1) and (2) above shall not restrict relief for any loss or capital allowance if the trade was set up and commenced within the prior five years, and, for the purposes of this subsection, a trade shall be treated as discontinued, and a new trade set up, in any event which under any of the provisions of the Tax Acts is to be treated as equivalent to the permanent discontinuance or setting up of a trade.
- (9) For the purposes of subsection (8) above a trade shall not be treated as discontinued if, under section 343(2), it is not to be treated as discontinued for the purpose of capital allowances and charges.
- (10) Where at any time there has been a change in the persons engaged in carrying on a trade, this section shall, notwithstanding subsection (8) above, apply to any person who was engaged in carrying on the trade immediately before and immediately after the change as if the trade were the same before and after without any discontinuance, and as if—
- (a) a husband and his wife were the same person, and
- (b) a husband or his wife were the same person as any company of which either the husband or the wife has control, or of which the two of them have control;

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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

- F1** 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)
- F2** 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)
- F3** Words in s. 397(3) substituted (with effect in accordance with s. 134(2) of the amending Act) by Finance Act 1996 (c. 8), Sch. 20 para. 27(a)
- F4** Words in s. 397(3)(a)(b) substituted (with effect in accordance with s. 134(2) of the amending Act) by Finance Act 1996 (c. 8), Sch. 20 para. 27(b)
- F5** 1990(C) s.164 and Sch.1 para.8(18)(a). *Previously* "section 72 of the 1968 Act".
- F6** 1990(C) s.164 and Sch.1 para.8(18)(b). *Previously* "section 73(2) of the 1968 Act".

Marginal Citations

- M1** Source—1970 s.180; 1986 s.56(7) Sch.13 2(5)

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

^{M2}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 ^{F7}. . . D in respect of interest payable on that amount,

then the amount of that interest shall be included in the amounts against which [^{F8}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

- F7** 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)
- F8** Words in s. 398 substituted (27.7.1993) by 1993 c. 34, s. 120, Sch. 14 para. 8(4)

Marginal Citations

- M2** Source—1973 s.26(2); 1974 s.30(2)

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

- (1) ^{M3}If, apart from section [F⁹143(1) of the 1992 Act] or section 128 above, gains arising to any person in the course of dealing in commodity or financial futures or in qualifying options would constitute, for the purposes of the Tax Acts, profits or gains chargeable to tax under Schedule D otherwise than as the profits of a trade, then any loss arising in the course of that dealing shall not be allowable against profits or gains which are chargeable to tax under Schedule D.
- (2) ^{M4}Relief shall not be given to any person under section 380, 381 or [F¹⁰393A(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) ^{M5}In this section “commodity futures”, “financial futures” and “qualifying options” have the same meanings as in section [F¹¹143 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 [F¹¹143(3)] of that section.

Textual Amendments

- F9** 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)).
- F10** Words in s. 399(2) substituted by Finance Act 1991 (c. 31, SIF 63:1), s. 73(3)-(5), **Sch. 15 para. 11**
- F11** 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

- M3** Source—1985 s.72(1); 1987 (No.2) s.81(1)
- M4** Source—1978 s.31
- M5** Source—1985 s.72(2); 1987 Sch.15 11(2); 1987 (No.2) s.81(1)

400 Write-off of government investment.

- (1) ^{M6}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.

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- (2) For the purposes of subsection (1) above a body's tax losses as at the end of an accounting period are—
- (a) any losses which under section 393(1) are ^{F12} . . . available for relief against its trading income for the next accounting period;
 - (b) in the case of an investment company, any expenses of management or charges on income which under section 75(3) are available for carry forward to the next accounting period;
 - (c) any allowances which under [^{F13}section 145(2) of the 1990 Act] are available for carry forward to the next accounting period;
 - (d) any amount paid by way of charges on income so far as it exceeds the company's profit for the period and is not taken into account under 75(3) or 393(9); and
 - (e) any allowable losses available under [^{F14}8 of the 1992 Act] so far as not allowed in that or a previous accounting period.
- (3) The set off to be made under subsection (1) above for any accounting period shall be made first against the amounts in paragraphs (a) to (d) of subsection (2) above and, so far as it cannot be so made, against the amount in paragraph (e) of that subsection.
- (4) For the purposes of subsection (1) above there shall be excluded from a body's tax losses as at the end of the accounting period ending last before the write-off date any amounts in respect of which a claim has been made before the write-off date under section [^{F15}393A(1)] or 402 of this Act or [^{F16}section 145(3) of the 1990 Act] but the body's tax losses as at the end of any subsequent accounting period shall be determined as if no such claim had been made on or after that date.
- (5) Any amount that could be set off under subsection (1) above against a body's tax losses as at the end of an accounting period (or could be so set off if that body then had any such losses) may be set off against the tax losses of any other body corporate which at the end of that period is a member of the same group as the first-mentioned body, 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 [^{F17}section 153 of the 1990 Act] or section [^{F18}50 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 profits or gains of that body for the purposes of Case I or II of Schedule D.
- (7) For the purposes of this section an amount of government investment in a body corporate is written-off—
- (a) if its liability to repay any money lent to it out of public funds by a Minister of the Crown is extinguished;
 - (b) if any of its shares for which a Minister of the Crown has subscribed out of public funds are cancelled; or
 - (c) if its commencing capital debt is reduced otherwise than by being paid off or its public dividend capital is reduced otherwise than by being repaid (including, in either case, a reduction to nil);

and the amount written-off and the write-off date are the amount in respect of which the liability is extinguished and the date on which it is extinguished, the amount subscribed for the shares that are cancelled and the date of cancellation or the amount of reduction

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in the commencing capital debt or public dividend capital and the date of the reduction, as the case may be.

- (8) In subsection (7) above “commencing capital debt” means any debt to a Minister of the Crown assumed as such under an enactment and “public dividend capital” means any amount paid by a Minister of the Crown under an enactment in which that amount is so described or under an enactment corresponding to an enactment in which a payment made on similar terms to another body is so described.
- (9) This section shall not have effect in relation to any amount written-off if and to the extent to which it is replaced by money lent, or a payment made, out of public funds or by shares subscribed for, whether for money or money’s worth, by a Minister of the Crown.
- [^{F19}(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 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

- F12** 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)
- F13** 1990(C) s.164and Sch.1 para.8(19)(a).Previously “section 74(2) of the 1968 Act”.
- F14** 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)).
- F15** Words in s. 400(4) substituted by Finance Act 1991 (c. 31, SIF 63:1), s. 73(3)-(5), Sch. 15 para. 12
- F16** 1990(C) s.164and Sch.1 para.8(19)(b).Previously “section 74(3) of the 1968 Act”.
- F17** 1990(C) s.164and Sch.1 para.8(19)(c).Previously “section 84 of the 1968 Act”.
- F18** 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)).
- F19** 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)

- C1** S. 400 restricted (retrospective to 11.1.1994) by Finance Act 1994 (c. 9), s. 252(3), Sch. 24 para. 16
- C2** S. 400(1) excluded (8.11.1995) by Atomic Energy Authority Act 1995 (c. 37), Sch. 3 para. 12(1)
- C3** 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.

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- C4 S. 400(6) modified (8.11.1995) by Atomic Energy Authority Act 1995 (c. 37), Sch. 3 para. 12(2)
- C5 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.
- C6 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

- M6 Source—1981 s.48

401 Relief for pre-trading expenditure.

- (1)^{M7} 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 [^{F20}seven] years before that time; and
 - (b) is not allowable as a deduction in computing his profits or gains from the trade, profession or vocation for the purposes of Case I or II of Schedule D but would have been so allowable if incurred after that time,
- the expenditure shall be [^{F21}treated as incurred on the day on which the trade, profession or vocation is first carried on by him] .

[^{F22}(1A) ^{F23}.....]

[^{F24}(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.]

[^{F25}(1B) Except for the purposes of corporation tax, subsection (1) above shall apply in relation to expenditure for the purposes of a Schedule A business as it applies in relation to expenditure for the purposes of a trade; and, accordingly, that subsection shall have

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effect in relation to expenditure for the purposes of a Schedule A business as if the reference to the computation of the profits or gains for the purposes of Case I or II of Schedule D were a reference to the computation of profits or gains for the purposes of Schedule A.]

(2) ^{F26}

Textual Amendments

- F20** 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)
- F21** 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)
- F22** 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)
- F23** 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)
- F24** 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)
- F25** 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
- F26** 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

Marginal Citations

- M7** Source—1980 s.39(1), (2), (4); 1982 s.50

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