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# Income and Corporation Taxes Act 1988

## 1988 CHAPTER 1

### PART X

#### LOSS RELIEF AND GROUP RELIEF

#### CHAPTER IV

#### GROUP RELIEF

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

- C1** Pt. 10 Ch. 4 modified (27.7.1999) by [Commonwealth Development Corporation Act 1999 \(c. 20\)](#), Sch. 3 paras. 1, **5(1)**
- C2** See—1988 s.434A—*limitations on group relief for life assurance company*. 1989 s.102—*surrender of company tax refund etc. within group (from a day to be appointed not earlier than 31 March 1992)*.

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

- (1) <sup>M1</sup>Subject to and in accordance with this Chapter and section 492(8), relief for trading losses and other amounts eligible for relief from corporation tax may, in the cases set out in subsections (2) and (3) below, be surrendered by a company (“the surrendering company”) and, on the making of a claim by another company (“the claimant company”) may be allowed to the claimant company by way of a relief from corporation tax called “group relief”.
- (2) Group relief shall be available in a case where the surrendering company and the claimant company are both members of the same group.  
A claim made by virtue of this subsection is referred to as a “group claim”.
- (3) <sup>M2</sup>Group relief shall also be available in the case of a surrendering company and a claimant company either where one of them is a member of a consortium and the other is—

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- (a) a trading company which is owned by the consortium and which is not a 75 per cent. subsidiary of any company; or
- (b) a trading company—
  - (i) which is a 90 per cent. subsidiary of a holding company which is owned by the consortium; and
  - (ii) which is not a 75 per cent. subsidiary of a company other than the holding company; or
- (c) a holding company which is owned by the consortium and which is not a 75 per cent. subsidiary of any company;

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

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

- (4) A consortium claim shall not be made <sup>F1</sup> . . . if a profit on a sale of the share capital of the other company or its holding company which the member owns would be treated as a trading receipt of that member.
- (5) <sup>M3</sup> Subject to the provisions of this Chapter, two or more claimant companies may make claims relating to the same surrendering company, and to the same accounting period of that surrendering company.
- (6) A payment for group relief—
  - (a) shall not be taken into account in computing profits or losses of either company for corporation tax purposes, and
  - (b) shall not for any of the purposes of the Corporation Tax Acts be regarded as a distribution or a charge on income;

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

#### Textual Amendments

**F1** Words in s. 402(4) repealed (retrospectively) by [Finance Act 2000 \(c. 17\), s. 100\(3\)\(a\)\(5\), Sch. 40 Pt. 2\(11\)](#), Note 2

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

**C3** [S. 402\(3\) restricted \(27.7.1999\)](#) by [Commonwealth Development Corporation Act 1999 \(c. 20\), Sch. 3 paras. 1, 5\(2\)](#)

#### Marginal Citations

**M1** Source—1970 s.258(1)

**M2** Source—1970 s.258(2); 1981 s.40(2); 1985 Sch.9 5, 6

**M3** Source—1970 s.258(3), (4)

### [<sup>F2</sup>403 Losses etc. which may be surrendered by way of group relief.

- (1) If in an accounting period (the “surrender period”) the surrendering company has—

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- (a) trading losses, excess capital allowances or a non-trading deficit on its loan relationships, or
- (b) charges on income, Schedule A losses, or management expenses which are available for group relief,

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

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

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

- (3) Charges on income, Schedule A losses and management expenses are available for surrender as group relief only to the extent that in aggregate they exceed the surrendering company's gross profits for the surrender period.

Any excess surrendered shall be taken to consist first of charges on income, then Schedule A losses, and finally management expenses.

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

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

#### Textual Amendments

- F2** Ss. 403-403ZE substituted for s. 403 (with effect in accordance with s. 38(2)(3) of the amending Act) by Finance Act 1998 (c. 36), Sch. 5 para. 29 (with Sch. 5 para. 73)

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

- C4** S. 403 applied by Finance Act 1996 (c. 8), Sch. 8 para 2(2) (as substituted (with effect in accordance with s. 38(2)(3) of the 1998 amending Act) by Finance Act 1998 (c. 36), Sch 5 para. 64(3) (with Sch 5 para. 73))
- C5** S. 403 modified (with effect in accordance with s. 38(2)(3) of the modifying Act) by Finance Act 1998 (c. 36), Sch. 5 paras. 75, 76
- C6** S. 403 excluded (with effect in accordance with s. 579(1) of the affecting Act) by Capital Allowances Act 2001 (c. 2), ss. 260(7), 261 (with Sch. 3)

#### [<sup>F3</sup>403ZA] Amounts eligible for group relief: trading losses.

- (1) For the purposes of section 403 a trading loss means a loss incurred by the surrendering company in the surrender period in carrying on a trade, computed as for the purposes of section 393A(1).
- (2) That section does not apply to a trading loss which would be excluded from section 393A(1) by—

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- (a) section 393A(3) (foreign trades and certain trades not carried on with a view to gain), or
  - (b) section 397 (farming and market gardening: restriction on loss relief).
- (3) Where a company owned by a consortium—
- (a) has in any relevant accounting period incurred a trading loss, and
  - (b) has profits (of whatever description) of that accounting period against which that loss could be set off under section 393A(1),
- the amount of the loss available to a member of the consortium on a consortium claim shall be determined on the assumption that the company has made a claim under section 393A(1) requiring the loss to be so set off.
- (4) Where the company mentioned in subsection (3) is a group/consortium company, the amount of the loss available under that subsection shall be determined before any reduction is made under section 405(1) to (3).]

#### Textual Amendments

**F3** Ss. 403-403ZE substituted for s. 403 (with effect in accordance with s. 38(2)(3) of the amending Act) by Finance Act 1998 (c. 36), Sch. 5 para. 29 (with Sch. 5 para. 73)

#### [<sup>F3</sup>403ZBAmounts eligible for group relief: excess capital allowances.

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

#### Textual Amendments

**F3** Ss. 403-403ZE substituted for s. 403 (with effect in accordance with s. 38(2)(3) of the amending Act) by Finance Act 1998 (c. 36), Sch. 5 para. 29 (with Sch. 5 para. 73)

#### [<sup>F3</sup>403ZCAmounts eligible for group relief: non-trading deficit on loan relationships.

- (1) For the purposes of section 403 a non-trading deficit on its loan relationships means a deficit of the surrendering company to which section 83 of the <sup>M4</sup>Finance Act 1996 applies.

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

#### Textual Amendments

**F3** Ss. 403-403ZE substituted for s. 403 (with effect in accordance with s. 38(2)(3) of the amending Act) by Finance Act 1998 (c. 36), Sch. 5 para. 29 (with Sch. 5 para. 73)

#### Marginal Citations

**M4** 1996 c.8.

### [<sup>F3</sup>403ZID] Other amounts available by way of group relief.

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

It does not include—

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

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

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

#### Textual Amendments

**F3** Ss. 403-403ZE substituted for s. 403 (with effect in accordance with s. 38(2)(3) of the amending Act) by Finance Act 1998 (c. 36), Sch. 5 para. 29 (with Sch. 5 para. 73)

### [<sup>F3</sup>403ZE] Computation of gross profits.

- (1) For the purposes of section 403 the surrendering company's gross profits of the surrender period means its profits for that period—
  - (a) without any deduction in respect of such losses, allowances and other amounts as are mentioned in paragraph (a) or (b) of subsection (1) of that section, and
  - (b) without any deduction falling to be made—

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- (i) in respect of losses, allowances or other amounts of any other period (whether or not of a description within subsection (1) of that section), or
  - (ii) by virtue of section 75(3) or 392A(3) (other amounts carried forward).
- (2) References in this section to section 75 do not include that section as applied by section 76 to companies carrying on life assurance business.]

#### Textual Amendments

**F3** Ss. 403-403ZE substituted for s. 403 (with effect in accordance with s. 38(2)(3) of the amending Act) by Finance Act 1998 (c. 36), Sch. 5 para. 29 (with Sch. 5 para. 73)

#### [<sup>F4</sup>403A Limits on group relief.

- (1) The amount which, on a claim for group relief, may be set off against the total profits of the claimant company for an accounting period (“the claim period”), and accordingly the amount to which any consent required in respect of that claim may relate, shall not exceed whichever is the smaller of the following amounts—
  - (a) the unused part of the surrenderable amount for the overlapping period; and
  - (b) the unrelieved part of the claimant company’s total profits for the overlapping period.
- (2) For the purposes of any claim for group relief—
  - (a) the unused part of the surrenderable amount for the overlapping period is the surrenderable amount for that period reduced by the amount of any prior surrenders attributable to the overlapping period; and
  - (b) the unrelieved part of the claimant company’s total profits for the overlapping period is the amount of its total profits for that period reduced by the amount of any previously claimed group relief attributable to the overlapping period.
- (3) For the purposes of any claim for group relief—
  - (a) the surrenderable amount for the overlapping period is so much of the surrenderable amount for the accounting period of the surrendering company to which the claim relates as is attributable, on an apportionment in accordance with section 403B, to the overlapping period;
  - (b) the surrenderable amount for an accounting period of the surrendering company is the total amount for that accounting period of the losses and other amounts which (disregarding this section and section 403C) are available in that company’s case for set off by way of group relief; and
  - (c) the amount of the claimant company’s total profits for the overlapping period is so much of its total profits for the claim period as is attributable, on an apportionment in accordance with section 403B, to the overlapping period.
- (4) In relation to any claim for group relief (“the relevant claim”) the amount of the prior surrenders attributable to the period which is the overlapping period in the case of the relevant claim is equal to the aggregate amount (if any) produced by—
  - (a) taking the amount of every claim for group relief (whether a group claim or a consortium claim) which—
    - (i) has been made before the relevant claim,

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- (ii) was made in respect of the whole or any part of the amount which, in relation to the relevant claim, is the surrenderable amount for the accounting period of the surrendering company to which the claim relates, and
      - (iii) has not been withdrawn;
    - (b) treating the amount of group relief which (having regard to the provisions of this section) is allowable under each such claim as an amount of relief for the period which is the overlapping period in the case of that claim;
    - (c) determining how much of each amount treated in accordance with paragraph (b) above as an amount of relief for a particular period is attributable, on an apportionment in accordance with section 403B, to the period (if any) which is common to both—
      - (i) that period; and
      - (ii) the period which is the overlapping period in the case of the relevant claim;
  - and
  - (d) aggregating all the amounts determined under paragraph (c) above in respect of the previously made claims.
- (5) In relation to any claim for group relief (“the relevant claim”), the amount of previously claimed group relief attributable to the period which is the overlapping period in the case of that claim is the aggregate amount produced by—
- (a) taking the amount of every claim for group relief (whether a group claim or a consortium claim) which—
    - (i) has been made before the relevant claim,
    - (ii) was a claim to set off an amount by way of group relief against the claimant company’s total profits for the period which, in relation to the relevant claim, is the claim period, and
    - (iii) has not been withdrawn;
  - (b) treating the amount of group relief which (having regard to the provisions of this section) is allowable under each such claim as an amount of relief for the period which is the overlapping period in the case of that claim;
  - (c) determining how much of each amount treated in accordance with paragraph (b) above as an amount of relief for a particular period is attributable, on an apportionment in accordance with section 403B, to the period (if any) which is common to both—
    - (i) that period; and
    - (ii) the period which is the overlapping period in the case of the relevant claim;
- and
- (d) aggregating all the amounts determined under paragraph (c) above in respect of the previously made claims.
- (6) For the purposes of this section the amount of group relief allowable on any claim (“the finalised claim”) shall fall to be determined as at the time when that claim ceases to be capable of being withdrawn as if—
- (a) every claim that became incapable of being withdrawn before that time were a claim made before the finalised claim; and
  - (b) every claim that remains capable of being withdrawn at that time were a claim made after the finalised claim.



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- (7) Subject to subsection (6) above and without prejudice to any power to withdraw and resubmit claims, where (but for this subsection) more than one claim for group relief would be taken for the purposes of subsections (4) and (5) above to have been made at the same time, those claims shall be deemed, instead, to have been made—
- (a) in such order as the company or companies making them may, by notice to any officer of the Board, elect or, as the case may be, jointly elect; and
  - (b) if there is no such election, in such order as an officer of the Board may direct.
- (8) In this section “the overlapping period”, in relation to a claim for group relief, means (subject to subsection (9) below and section 406(3) and (7)) the period which is common to both—
- (a) the claim period; and
  - (b) the accounting period of the surrendering company to which the claim relates.
- (9) For the purposes of this section any time in the period which, in relation to any claim for group relief, is common to both the accounting periods mentioned in subsection (8) above but which is a time when the qualifying conditions were not satisfied—
- (a) shall be treated as not comprised in the period which is the overlapping period in the case of that claim; and
  - (b) shall be treated instead, in relation to each of those accounting periods, as if it constituted a part of that accounting period which was not common to both periods.
- (10) For the purposes of subsection (9) above the qualifying conditions are satisfied in relation to any claim for group relief at the following times, that is to say—
- (a) if the claim is a group claim, whenever the claimant company and the surrendering company are both members of the same group; and
  - (b) if the claim is a consortium claim, whenever the conditions specified in section 402(3) for the making of that claim are satisfied in the case of the claimant company and the surrendering company.]

#### **Textual Amendments**

- F4** Ss. 403A-403C inserted (with effect in accordance with [Sch. 7 para. 9](#) of the amending Act) by [Finance \(No. 2\) Act 1997 \(c. 58\)](#), [Sch. 7 para. 2](#)

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

- C7** S. 403A modified by [Taxation of Chargeable Gains Act 1992 \(c. 12\)](#), [s. 179\(4\)](#) (as amended (with effect in accordance with [Sch. 7 para. 9](#) of the 1997 amending Act) by [Finance \(No. 2\) Act 1997 \(c. 58\)](#), [Sch. 7 para. 8](#))

#### **[<sup>F4</sup>403B Apportionments under section 403A.**

- (1) Subject to subsection (2) below, where an apportionment falls to be made under section 403A for the purpose of determining how much of an amount for any period (“the first period”) is attributable to any other period (“the second period”) which comprises the whole or a part of the first period—
- (a) the whole of that amount shall be attributed to the second period if the first and second periods begin and end at the same times; and



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- (b) in any other case, the apportionment shall be made on a time basis according to how much of the first period coincides with the second period.
- (2) Where the circumstances of a particular case are such that the making on the time basis mentioned in subsection (1)(b) above of some or all of the apportionments to be made in that case would work in a manner that would be unjust or unreasonable in relation to any person, those apportionments shall be made instead (to the extent only that is necessary in order to avoid injustice and unreasonableness) in such other manner as may be just and reasonable.]

#### Textual Amendments

- F4** Ss. 403A-403C inserted (with effect in accordance with Sch. 7 para. 9 of the amending Act) by Finance (No. 2) Act 1997 (c. 58), Sch. 7 para. 2

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

- C8** S. 403B modified by Taxation of Chargeable Gains Act 1992 (c. 12), s. 179(4) (as amended (with effect in accordance with Sch. 7 para. 9 of the 1997 amending Act) by Finance (No. 2) Act 1997 (c. 58), Sch. 7 para. 8)

### [<sup>F4</sup>]<sup>F5</sup> 403C Amount of relief in consortium cases.

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

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

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

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

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

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

- (a) the percentage of the ordinary share capital of the claimant company that is beneficially owned by the surrendering company;
- (b) the percentage to which the surrendering company is beneficially entitled of any profits available for distribution to equity holders of the claimant company; and

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- (c) the percentage to which the surrendering company would be beneficially entitled of any assets of the claimant company available for distribution to its equity holders on a winding-up.

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

- (4) In any case where the claimant or surrendering company is a subsidiary of a holding company which is owned by a consortium, for the references in subsection (2) or (3) above to the claimant or surrendering company there shall be substituted references to the holding company.
- (5) Expressions used in this section and in section 403A have the same meanings in this section as in that section.
- (6) Schedule 18 has effect for supplementing this section.]]

#### Textual Amendments

- F4** Ss. 403A-403C inserted (with effect in accordance with Sch. 7 para. 9 of the amending Act) by Finance (No. 2) Act 1997 (c. 58), Sch. 7 para. 2
- F5** S. 403C substituted (retrospectively) by Finance Act 2000 (c. 17), s. 100(1)(5)

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#### [<sup>F6</sup>403D Relief for or in respect of non-resident companies.

- (1) In determining for the purposes of this Chapter the amounts for any accounting period of the losses and other amounts available for surrender by way of group relief by a non-resident company, no loss or other amount shall be treated as so available except in so far as—
- (a) it is attributable to activities of that company the income and gains from which for that period are, or (were there any) would be, brought into account in computing the company's chargeable profits for that period for corporation tax purposes;
  - (b) it is not attributable to activities of the company which are made exempt from corporation tax for that period by any double taxation arrangements; and
  - (c) no part of—
    - (i) the loss or other amount, or
    - (ii) any amount brought into account in computing it,
 corresponds to, or is represented in, any amount which, for the purposes of any foreign tax, is (in any period) deductible from or otherwise allowable against non-UK profits of the company or any other person.
- (2) In determining for the purposes of sections 403A and 403C the total profits for an accounting period of a non-resident company, there shall be disregarded—
- (a) amounts not falling to be comprised for corporation tax purposes in the chargeable profits of the company for that accounting period, and
  - (b) so far as not falling within paragraph (a) above, any amounts arising from activities which are made exempt from corporation tax for that period by any double taxation arrangements.

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- (3) In this section “non-UK profits”, in relation to any person, means amounts which—
- (a) are taken for the purposes of any foreign tax to be the amount of the profits, income or gains on which (after allowing for deductions) that person is charged with that tax, and
  - (b) are not amounts corresponding to, and are not represented in, the total profits (of that or any other person) for any accounting period, or amounts taken into account in computing such amounts.
- (4) Subsection (2) above applies for the purposes of subsection (3)(b) above as it applies for the purposes of sections 403A and 403C.
- (5) For the purposes of this section an amount shall not be taken to be an amount which for the purposes of any foreign tax is deductible from or otherwise allowable against any non-UK profits of any person by reason only that it is—
- (a) an amount of profits brought into account for the purpose of being excluded from the profits that are non-UK profits of that person by reference to that foreign tax; or
  - (b) an amount brought into account in computing the amount of any profits falling to be so excluded.
- (6) So much of the law of any territory outside the United Kingdom as for the purposes of any foreign tax makes the deductibility of any amount dependent on whether or not it is deductible for tax purposes in the United Kingdom shall be disregarded for the purposes of this section.
- (7) For the purposes of this section activities of a company are made exempt from corporation tax for any period by double taxation arrangements if the effect of any such arrangements is that the income and gains (if any) arising for that period from those activities is to be disregarded in computing the company’s chargeable profits.
- (8) In this section “double taxation arrangements” means any arrangements having effect by virtue of section 788.
- (9) In this section “foreign tax” means any tax chargeable under the law of any territory outside the United Kingdom which—
- (a) is charged on income and corresponds to United Kingdom income tax; or
  - (b) is charged on income or chargeable gains or both and corresponds to United Kingdom corporation tax;
- but for the purposes of this section a tax shall not be treated as failing to correspond to income tax or corporation tax by reason only that it is chargeable under the law of a province, state or other part of a country, or is levied by or on behalf of a municipality or other local body.
- (10) In determining for the purposes of this section whether any activities are made exempt from corporation tax for any period by any double taxation arrangements any requirement that a claim is made before effect is given to any provision of the arrangements shall be disregarded.]

#### Textual Amendments

- F6** Ss. 403D, 403E inserted (with effect in accordance with Sch. 27 para. 6(1)(2)(4) of the amending Act) by Finance Act 2000 (c. 17), Sch. 27 para. 4

*Status: Point in time view as at 16/06/1999. This version of this chapter contains provisions that are not valid for this point in time.*

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VALID FROM 28/07/2000

### **[<sup>F6</sup>403E Relief for overseas losses of UK resident companies.**

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

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#### Textual Amendments

- F6** Ss. 403D, 403E inserted (with effect in accordance with Sch. 27 para. 6(1)(2)(4) of the amending Act) by Finance Act 2000 (c. 17), Sch. 27 para. 4

VALID FROM 19/07/2006

#### [<sup>F7</sup>403F Relief in respect of overseas losses of non-resident companies

- (1) This section has effect for determining for the purposes of this Chapter the extent to which a loss or other amount is available for surrender by way of group relief by a non-resident company—
  - (a) which is resident in an EEA territory, or
  - (b) which is not so resident but which carries on a trade in an EEA territory through a permanent establishment,in a case where a group claim may be made as a result of the condition in section 402(2A) being satisfied.
- (2) A loss or other amount is not available for surrender by way of group relief by the non-resident company except in so far as, in relation to the EEA territory, the amount meets—
  - (a) the equivalence condition,
  - (b) the EEA tax loss condition,
  - (c) the qualifying loss condition, and
  - (d) the precedence condition.
- (3) Part 1 of Schedule 18A determines, in the case of any amount and any EEA territory, the extent to which those conditions are met.
- (4) In so far as a loss or other amount meets those conditions, Part 2 of Schedule 18A applies—
  - (a) for calculating the amount of the loss or other amount (if any) that is available for surrender by way of group relief, and
  - (b) otherwise for making provision in relation to the application of this Chapter to the non-resident company.
- (5) This section is subject to section 403G (unallowable overseas losses of non-resident companies).]

#### Textual Amendments

- F7** S. 403F inserted (with effect in accordance with Sch. 1 para. 9 of the amending Act) by Finance Act 2006 (c. 25), Sch. 1 para. 4(1)

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VALID FROM 19/07/2006

### **[<sup>F8</sup>403G Unallowable overseas losses of non-resident companies**

- (1) This section applies in the case of a loss or other amount arising to a non-resident company—
  - (a) which is resident in any EEA territory, or
  - (b) which is not so resident but which carries on a trade in an EEA territory through a permanent establishment,
 where the amount is not attributable for corporation tax purposes to any UK permanent establishment of the non-resident company.
- (2) The amount is not available for surrender by way of group relief by the non-resident company in so far as conditions A and B are met.
- (3) Condition A is that—
  - (a) the amount would not qualify for group relief but for any relevant arrangements, or
  - (b) the amount would not have arisen to the non-resident company but for any relevant arrangements.
- (4) Condition B is that the main purpose, or one of the main purposes, of the relevant arrangements was to secure that the amount would qualify for group relief.
- (5) In this section references to relevant arrangements, in relation to any amount, are to—
  - (a) arrangements made on or after 20th February 2006, or
  - (b) arrangements made before that date where the amount would (but for this section) first qualify for group relief on or after that date or (as the case may be) the amount arises on or after that date.
- (6) In this section—
 

“arrangements” includes any agreement, understanding, scheme, transaction or series of transactions (whether or not legally enforceable),

“UK permanent establishment”, in relation to the non-resident company, means any permanent establishment through which it carries on a trade in the United Kingdom.]

#### **Textual Amendments**

- F8** S. 403G inserted (with effect in accordance with [Sch. 1 para. 9](#) of the amending Act) by [Finance Act 2006 \(c. 25\)](#), [Sch. 1 para. 4\(2\)](#)

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

- (1) <sup>M5</sup>Notwithstanding any other provision of this Chapter, no loss or other amount shall be available for set off by way of group relief in accordance with section 403 if, in the material accounting period of the company which would otherwise be the surrendering company, that company is for the purposes of this section a dual resident investing company.

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- (2) In this section “the material accounting period” means, according to the kind of group relief which would be appropriate, the accounting period—
- [<sup>F9</sup>(a) in which the trading loss or Schedule A loss is incurred; or
  - (aa) in which the non-trading deficit on the company’s loan relationships arises; or]
  - (b) for which the capital allowances fall to be made; or
  - (c) for which the expenses of management are disbursed; or
  - (d) for which the amount is paid by way of charges on income;
- but subsection (1) above does not have effect unless the material accounting period begins on or after 1st April 1987.
- (3) In Schedule 17—
- (a) Part I has effect where an accounting period of a company in which it is a dual resident investing company begins before and ends on or after 1st April 1987 and references in subsections (1) and (2) above to the material accounting period shall be construed accordingly; and
  - (b) Part II has effect with respect to the time at which certain interest and other payments are to be treated as paid.
- (4) A company is for the purposes of this section a dual resident company in any accounting period in which—
- (a) it is resident in the United Kingdom; and
  - (b) it is also within a charge to tax under the laws of a territory outside the United Kingdom—
    - (i) because it derives its status as a company from those laws; or
    - (ii) because its place of management is in that territory; or
    - (iii) because under those laws it is for any other reason regarded as resident in that territory for the purposes of that charge.
- (5) In any accounting period throughout which it is not a trading company, a dual resident company is for the purposes of this section an investing company.
- (6) In any accounting period of a dual resident company in which it is a trading company, the company is nevertheless for the purposes of this section an investing company if—
- (a) in that period it carries on a trade of such a description that its main function or one of its main functions consists of all or any of the following, namely—
    - (i) acquiring and holding, directly or indirectly, shares, securities or investments of any other description, including interests in companies (resident outside, as well as in, the United Kingdom) with which the dual resident company is connected, within the terms of section 839;
    - [<sup>F10</sup>(ia) making payments in relation to which, being payments under loan relationships, any debits fall to be brought into account for the purposes of Chapter II of Part IV of the Finance Act 1996;]
    - (ii) making payments which, by virtue of any enactment, are charges on income for the purposes of corporation tax;
    - (iii) making payments (of interest or other sums) which are similar to those referred to in sub-paragraph (ii) above but which are deductible in computing the profits of the company for the purposes of corporation tax;



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- (iv) obtaining funds (by borrowing or in any other manner whatsoever) for the purpose of, or otherwise in connection with, any of the activities referred to in sub-paragraphs (i) to (iii) above; or
- (b) it does not fall within paragraph (a) above, but in that accounting period it carries on all or any of the activities referred to in sub-paragraphs (i) to (iv) of that paragraph and does so—
  - (i) to an extent which does not appear to be justified by any trade which it does carry on; or
  - (ii) for a purpose which does not appear to be appropriate to any such trade; or
- (c) <sup>F11</sup> .....

[<sup>F12</sup>(7) In this section “debtor relationship” has the same meaning as in Chapter II of Part IV of the Finance Act 1996.]

#### Textual Amendments

- F9** S. 404(2)(a)(aa) substituted for s. 404(2)(a) (with effect in accordance with s. 38(2)(3) of the amending Act) by Finance Act 1998 (c. 36), **Sch. 5 para. 37(2)** (with Sch. 5 para. 73)
- F10** S 404(6)(a)(ia) inserted (with effect in accordance with s. 105(1) of the amending Act) by Finance Act 1996 (c. 8), **Sch. 14 para. 21(1)(a)** (with Sch. 15)
- F11** S. 404(6)(c) repealed (with effect in accordance with s. 38(2)(3) of the repealing Act) by Finance Act 1998 (c. 36), Sch. 5 para. 37(3), **Sch. 27 Pt. 3(4)**, Note (with Sch. 5 para. 73)
- F12** S. 404(7) inserted (with effect in accordance with s. 105(1) of the amending Act) by Finance Act 1996 (c. 8), **Sch. 14 para. 21(2)** (with Sch. 15)

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

- C9** S. 404 applied (with modifications) (31.3.2001 with effect in accordance with reg. 1(2) of the modifying S.I.) by [The Double Taxation Relief \(Surrender of Relievable Tax Within a Group\) Regulations 2001 \(S.I. 2001/1163\)](#), **reg. 10**
- C10** *Definition applied for purposes of—1970 s.273A—transfer of U.K. branch or agency.1970 s.276(1A)—replacement of business assets by members of a group.1990(C) s.161(2)—interpretation.*

#### Marginal Citations

- M5** Source—1987 (No.2) s.63

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

- (1) <sup>M6</sup>For the purposes of a consortium claim in respect of the loss or other amount of any relevant accounting period of a group/consortium company, that loss or other amount shall be treated as reduced (or, as the case may be, extinguished) by first deducting therefrom the potential relief attributable to group claims.
- (2) Subject to subsection (3) below, in relation to the loss or other amount of a relevant accounting period of a group/consortium company, the potential relief attributable to group claims is the aggregate amount of group relief that would be claimed if every company which, as a member of the same group of companies as the group/consortium company, could make a group claim in respect of that loss or other amount made such a claim for an amount which, when set against the claimant company’s total profits for its corresponding accounting period, would equal those profits.

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- (3) Where for any accounting period another member of the group of companies of which the group/consortium company is a member has a loss or other amount available for relief and one or more group claims is or are in fact made in respect of that loss or other amount, account shall be taken of the relief so claimed before determining (in relation to the loss or other amount of the group/consortium company) the potential relief attributable to group claims under subsection (2) above.
- (4) <sup>M7</sup>In any case where—
- (a) a consortium claim is made by a group/consortium company in respect of a loss or other amount of an accounting period of a member of the consortium, and
  - (b) the corresponding accounting period of the group/consortium company is a relevant accounting period,
- the total profits of the corresponding accounting period of the group/consortium company against [<sup>F13</sup>which an amount may by virtue of that claim be set off by way of group relief] shall be treated as reduced (or as the case may be extinguished) by deducting therefrom the potential relief available to the group/consortium company by way of group claims.
- (5) Subject to subsection (6) below, in relation to a relevant accounting period of a group/consortium company, the potential relief available to the company by way of group claims is the maximum amount of group relief that could be claimed by the company for that accounting period on group claims relating to the losses or other amounts available for relief of other members of the group of companies of which the group/consortium company is a member.
- (6) Where another member of the group of companies of which the group/consortium company is a member in fact makes one or more group claims in respect of losses or other amounts of other members of the group, account shall be taken of the relief already claimed by that company in determining the potential relief available to the group/consortium company by way of group claims under subsection (5) above.

#### Textual Amendments

- F13** Words in s. 405(4) substituted (with effect in accordance with Sch. 7 para. 9 of the amending Act) by Finance (No. 2) Act 1997 (c. 58), Sch. 7 para. 4

#### Marginal Citations

- M6** Source—1985 Sch.9 2  
**M7** Source—1985 Sch.9 3

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

- (1) <sup>M8</sup>In this section—
- (a) “link company” means a company which is a member of a consortium and is also a member of a group of companies; and
  - (b) “consortium company”, in relation to a link company, means a company owned by the consortium of which the link company is a member; and
  - (c) “group member”, in relation to a link company, means a company which is a member of the group of which the link company is also a member but is not itself a member of the consortium of which the link company is a member.

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- (2)<sup>M9</sup> Subject to subsections (3) and (4) below, where the link company could (disregarding any deficiency of profits) make a consortium claim in respect of the loss or other amount eligible for relief of a relevant accounting period of a consortium company, a group member may make any consortium claim which could be made by the link company; and the fraction which is [<sup>F14</sup>the relevant fraction for the purposes of section 403C] where a group member is the claimant company shall be the same as [<sup>F15</sup>it would be] if the link company were the claimant company.
- [<sup>F16</sup>(3) Sections 403A to 403C shall have effect in relation to a consortium claim made by a group member by virtue of subsection (2) above as if any time when the claimant company was not a member of the group—
- (a) were not comprised in the period which is the overlapping period in the case of that claim; and
  - (b) were to be treated instead as if it constituted a part of the claim period which did not coincide with any part of the accounting period of the surrendering company to which the claim relates.]
- (4) The maximum amount of relief which, in the aggregate, may be claimed by group members and the link company by consortium claims relating to the loss or other amount of a relevant accounting period of a consortium company shall not exceed the relief which could have been claimed by the link company (disregarding any deficiency of profits) if subsections (2) and (3) above had not been enacted.
- (5)<sup>M10</sup> Subject to subsections (6) to (8) below, where a group member has for a relevant accounting period a loss or other amount available for relief, a consortium company may make any claim in respect of that loss or other amount which it could make if the group member were a member of the consortium at all times when the link company was such a member, but not at any other time.
- (6) The fraction which is [<sup>F14</sup>the relevant fraction for the purposes of section 403C] in relation to a consortium claim made by virtue of subsection (5) above shall be the same as [<sup>F15</sup>it would be] if the link company were the surrendering company, except that the [<sup>F17</sup>overlapping period in respect of which the relevant fraction] is to be ascertained shall be that of the group member which is in fact the surrendering company.
- [<sup>F18</sup>(7) Sections 403A to 403C shall have effect in relation to a consortium claim made by a consortium company by virtue of subsection (5) above as if any time when the surrendering company was not a member of the group—
- (a) were not comprised in the period which is the overlapping period in the case of that claim; and
  - (b) were to be treated instead as if it constituted a part of the claim period that did not coincide with any part of the accounting period of the surrendering company to which the claim relates.]
- (8) For any accounting period of a consortium company (“the claimant company’s accounting period”) the maximum amount of relief which, in the aggregate, may be claimed by that company by consortium claims relating to the losses or other amounts of accounting periods of the link company and group members shall not exceed [<sup>F19</sup>the maximum amount of relief available to the claimant company] on a consortium claim in respect of which—
- (a) the link company was the surrendering company; and
  - (b) the link company’s accounting period was the same as the claimant company’s accounting period.

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#### Textual Amendments

- F14** Words in s. 406(2)(6) substituted (with effect in accordance with Sch. 7 para. 9 of the amending Act) by Finance (No. 2) Act 1997 (c. 58), **Sch. 7 para. 5(1)(a)**
- F15** Words in s. 406(2)(6) substituted (with effect in accordance with Sch. 7 para. 9 of the amending Act) by Finance (No. 2) Act 1997 (c. 58), **Sch. 7 para. 5(1)(b)**
- F16** S. 406(3) substituted (with effect in accordance with Sch. 7 para. 9 of the amending Act) by Finance (No. 2) Act 1997 (c. 58), **Sch. 7 para. 5(2)**
- F17** Words in s. 406(6) substituted (retrospectively) by Finance Act 2000 (c. 17), **s. 100(2)(5)**
- F18** S. 406(7) substituted (with effect in accordance with Sch. 7 para. 9 of the amending Act) by Finance (No. 2) Act 1997 (c. 58), **Sch. 7 para. 5(3)**
- F19** Words in s. 406(8) substituted (with effect in accordance with Sch. 7 para. 9 of the amending Act) by Finance (No. 2) Act 1997 (c. 58), **Sch. 7 para. 5(4)**

#### Marginal Citations

- M8** Source—1985 Sch.9 5(1), 6(1)
- M9** Source—1985 Sch.9 5(2)-(4)
- M10** Source—1985 Sch.9 6(2)-(5)

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

- (1) <sup>M11</sup>Group relief for an accounting period shall be allowed as a deduction against the claimant company's total profits for the period—
- before reduction by any relief derived from a subsequent accounting period, but
  - <sup>M12</sup>as reduced by any other relief from tax (including relief in respect of charges on income under section 338(1) [<sup>F20</sup> of this Act or by virtue of section 83 of, or paragraph 4 of Schedule 11 to, the Finance Act 1996 (non-trading deficits)]) determined on the assumption that the company makes all relevant claims under section [<sup>F21</sup>393A(1)] of this Act and [<sup>F22</sup>section 145(3) of the 1990 Act] (set-off of capital allowances against total profits).
- (2) For the purposes of this section “relief derived from a subsequent accounting period” means—
- <sup>M13</sup>relief under section [<sup>F23</sup>393A(1)(b)] in respect of a loss incurred in an accounting period after the accounting period the profits of which are being computed; and
  - <sup>M14</sup>relief under [<sup>F22</sup>section 145(3) of the 1990 Act] in respect of capital allowances falling to be made for an accounting period after the accounting period the profits of which are being computed; [<sup>F24</sup>and]
- [<sup>F25</sup>[<sup>F26</sup>(c) relief in pursuance of a claim under section 83(2) of, or paragraph 4 of Schedule 11 to, the Finance Act 1996 (non-trading deficits) in respect of any deficit for a deficit period after the accounting period the profits of which are being computed.]]
- (3) <sup>M15</sup>The reductions to be made in total profits of an accounting period against which any relief derived from a subsequent accounting period is to be set off shall include any group relief for that first-mentioned accounting period.

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#### Textual Amendments

- F20** Words in s. 407(1)(b) inserted (with effect in accordance with s. 105(1) of the amending Act) by Finance Act 1996 (c. 8), **Sch. 14 para. 22(1)** (with Sch. 15)
- F21** Words in s. 407(1)(b) substituted by Finance Act 1991 (c. 31, SIF 63:1), s. 73(3)-(5), **Sch. 15 para. 14(1)**
- F22** 1990(C) s.164 and Sch.1 para.8(20). Previously “section 74(3) of the 1968 Act” in both places.
- F23** Words in s. 407(2)(a) substituted by Finance Act 1991 (c. 31, SIF 63:1), s. 73(3)-(5), **Sch. 15 para. 14(2)**
- F24** Word in s. 407(2) inserted (27.7.1993 ) by 1993 c. 34, s. 170, **Sch. 18 para.4**
- F25** S. 407(2)(c) and words inserted (27.7.1993) by 1993 c. 34, s. 170, **Sch. 18 para.4**
- F26** S. 407(2)(c) substituted for para. (c) and words following it (with effect in accordance with s. 105(1) of the amending Act) by Finance Act 1996 (c. 8), **Sch. 14 para. 22(2)** (with Sch. 15)

#### Marginal Citations

- M11** Source—1970 s.260(1)
- M12** Source—1970 s.260(1), (2)
- M13** Source—1970 s.260(3)(a), (d)
- M14** Source—1970 s.260(3)(b)
- M15** Source—1970 s.260(4)

### 408 Corresponding accounting periods.

F27 .....

#### Textual Amendments

- F27** Ss. 408, 409 repealed (with effect in accordance with Sch. 7 para. 9, Sch. Pt. 2(14) Note of the repealing Act) by Finance (No. 2) Act 1997 (c. 58), Sch. 7 para. 6, **Sch. 8 Pt. 2(14)**

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

F28 .....

#### Textual Amendments

- F28** Ss. 408, 409 repealed (with effect in accordance with Sch. 7 para. 9, Sch. Pt. 2(14) Note of the repealing Act) by Finance (No. 2) Act 1997 (c. 58), Sch. 7 para. 6, **Sch. 8 Pt. 2(14)**

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

- (1) <sup>M16</sup>If, apart from this section, two companies (“the first company” and “the second company”) would be treated as members of the same group of companies and—
- (a) in an accounting period one of the two companies has trading losses or other amounts eligible for relief from corporation tax which it would, apart from this section, be entitled to surrender by way of group relief; and

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- (b) arrangements are in existence by virtue of which, at some time during or after the expiry of that accounting period—
- (i) the first company or any successor of it could cease to be a member of the same group of companies as the second company and could become a member of the same group of companies as a third company; or
  - (ii) any person has or could obtain, or any persons together have or could obtain, control of the first company but not of the second; or
  - (iii) a third company could begin to carry on the whole or any part of a trade which, at any time in that accounting period, is carried on by the first company and could do so either as a successor of the first company or as a successor of another company which is not a third company but which, at some time during or after the expiry of that accounting period, has begun to carry on the whole or any part of that trade;

then, for the purposes of this Chapter, the first company shall be treated as not being a member of the same group of companies as the second company.

- (2) If a trading company is owned by a consortium or is a 90 per cent. subsidiary of a holding company which is owned by a consortium and—

- (a) in any accounting period the trading company or a member of the consortium has trading losses or other amounts eligible for relief from corporation tax which it would, apart from this section, be entitled to surrender by way of group relief; and
- (b) arrangements are in existence by virtue of which—
  - (i) the trading company or any successor of it could, at some time during or after the expiry of that accounting period, become a 75 per cent. subsidiary of a third company; or
  - (ii) any person who owns, or any persons who together own, less than 50 per cent. of the ordinary share capital of the trading company has or together have, or could at some time during or after the expiry of that accounting period obtain, control of the trading company; or
  - (iii) any person, other than a holding company of which the trading company is a 90 per cent. subsidiary, either alone or together with connected persons, holds or could obtain, or controls or could control the exercise of not less than 75 per cent. of the votes which may be cast on a poll taken at a general meeting of that trading company in that accounting period or in any subsequent accounting period; or
  - (iv) a third company could begin to carry on, at some time during or after the expiry of that accounting period, the whole or any part of a trade which, at any time in that accounting period, is carried on by the trading company and could do so either as a successor of the trading company or as a successor of another company which is not a third company but which, at some time during or after the expiry of that accounting period, has begun to carry on the whole or any part of that trade;

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

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- (3) In any case where a trading company is a 90 per cent. subsidiary of a holding company which is owned by a consortium, any reference in subsection (2) above to the trading company, other than a reference in paragraph (b)(iv), shall be construed as including a reference to the holding company.
- (4) In this section “third company” means a company which, apart from any provision made by or under any such arrangements as are specified in paragraph (b) of either subsection (1) or subsection (2) above, is not a member of the same group of companies as the first company or, as the case may be, the trading company or the holding company to which subsection (2) above applies.
- (5) In subsections (1) and (2) above—  
“arrangements” means arrangements of any kind whether in writing or not;  
“connected persons” shall be construed in accordance with section 839 [F29but as if subsection (7) of that section (persons acting together to control a company are connected) were omitted]; and  
“control” has the meaning assigned by section 840.
- (6) For the purposes of subsections (1) and (2) above a company is the successor of another if it carries on a trade which, in whole or in part, the other company has ceased to carry on and the circumstances are such that—  
(a) section 343 applies in relation to the two companies as the predecessor and the successor within the meaning of that section; or  
(b) the two companies are connected with each other within the meaning of section 839.
- (7) <sup>M17</sup>Where by virtue of any enactment a Minister of the Crown or Northern Ireland department has power to give directions to a statutory body as to the disposal of assets belonging to, or to a subsidiary of, that body, the existence of that power shall not be regarded as constituting or as having at any time constituted an arrangement within the meaning of this section.

#### Textual Amendments

**F29** Words in s. 410(5) inserted (19.3.1997) by [Finance Act 1997 \(c. 16\), s. 68](#)

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

- C11** S. 410 restricted (retrospective to 5.11.1993) by [Finance Act 1994 \(c. 9\), s. 252\(2\), Sch. 24 para. 17](#)
- C12** S. 410 restricted (19.9.1994) by [Coal Industry Act 1994 \(c. 21\), s. 68\(4\), Sch. 4 para. 16](#) (with s. 40(7)); [S.I. 1994/2189, art. 2, Sch.](#)
- C13** S. 410 restricted (19.7.1995) by [Crown Agents Act 1995 \(c. 24\) s. 7\(2\)](#)
- C14** S. 410 restricted (6.11.2000) by [Postal Services Act 2000 \(c. 26\), s. 130\(1\), Sch. 4 para. 5](#); [S.I. 2000/2957, art. 2\(1\), Sch. 1](#)
- C15** S. 410 restricted (1.4.2002) by [The Scottish Water \(Transfer of Functions, etc.\) \(Tax Provisions\) Order 2002 \(S.I. 2002/653\), art. 5](#) (with art. 6)
- C16** S. 410(1)(2) restricted (8.11.1995) by [Atomic Energy Authority Act 1995 \(c. 37\), Sch. 3 para. 8\(1\)](#)
- C17** S. 410(1)(2) restricted (24.7.1996) by [Broadcasting Act 1996 \(c. 55\), s. 149\(1\)\(f\), Sch. 7 para. 20\(1\)](#) (with s. 43(6))
- C18** S. 410(1)(4)(5)-(7) applied (with modifications) (31.3.2001 with effect in accordance with reg. 1(2) of the affecting S.I.) by [The Double Taxation Relief \(Surrender of Relievable Tax Within a Group\) Regulations 2001 \(S.I. 2001/1163\), reg. 10](#)



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**C19** See Trustee Savings Bank Act 1985 s.5 and Sch.2 para.6(8)—s.410 not to apply to transfers effected by s.3 of the TSB Act 1985.

**Marginal Citations**

**M16** Source—1973 s.29, 32(6); 1981 s.40(6)

**M17** Source—1981 s.47

**411 Exclusion of double allowances.**

(1) <sup>M18</sup>Relief shall not be given more than once in respect of the same amount, whether by giving group relief and by giving some other relief (in any accounting period) to the surrendering company, or by giving group relief more than once.

(2) <sup>F30</sup> .....

(3) <sup>F30</sup> .....

(4) <sup>F30</sup> .....

(5) <sup>F30</sup> .....

(6) <sup>F30</sup> .....

(7) <sup>F30</sup> .....

(8) <sup>F30</sup> .....

(9) <sup>F30</sup> .....

(10) <sup>M19</sup>Without prejudice to the provisions of [<sup>F31</sup>section 161(5) of the 1990 Act], any reference in [<sup>F31</sup>that Act, except parts III and VII,] to an allowance made includes a reference to an allowance which would be made but for the granting of group relief, or but for that and but for an insufficiency of profits or other income against which to make it.

**Textual Amendments**

**F30** S. 411(2)-(9) repealed (with effect in accordance with Sch. 7 para. 6, Sch. 8 Pt. 2(14) Note of the repealing Act) by Finance (No. 2) Act 1997 (c. 58), Sch. 7 para. 6, **Sch. 8 Pt. 2(14)**

**F31** 1990(C) s.164 and Sch.1 para.8(21). *Previously*  
“section 87(3) of the 1968 Act”  
*and*  
“Part I of that Act”  
*respectively.*

**Marginal Citations**

**M18** Source—1970 s.263(1),(2)

**M19** Source—1970 s.263(6)

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VALID FROM 01/04/2009

**[<sup>F32</sup>411ZA] No relief where deduction of relevant return under alternative finance arrangements disallowed**

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

**Textual Amendments**

**F32** S. 411ZA inserted (1.4.2009 with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), **Sch. 1 para. 124** (with Sch. 2 Pts. 1, 2)

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

**C20** S. 411ZA: power to amend conferred (1.4.2009 with effect in accordance with s. 1329(1) of the affecting Act) by Corporation Tax Act 2009 (c. 4), **s. 521** (with Sch. 2 Pts. 1, 2, paras. 73-75)

**[<sup>F33</sup>411A] Group relief by way of substitution for loss relief.**

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

**Textual Amendments**

**F33** S. 411A inserted (with effect in accordance with s. 101(2) of the amending Act) by Finance Act 1990 (c. 29), **s. 101(1)**

**[<sup>F34</sup>412] Claims and adjustments.**

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

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### Textual Amendments

**F34** S. 412 substituted (with effect in accordance with s. 117(4)(5) of the amending Act) by Finance Act 1998 (c. 36), Sch. 19 para. 46; S.I. 1998/3173, art. 2

## 413 Interpretation of Chapter IV.

(1) The following provisions of this section have effect for the interpretation of this Chapter.

(2) <sup>M20</sup>In this Chapter—

“claimant company” has the meaning given by section 402(1);

“consortium claim” means a claim for group relief made by virtue of section 402(3);

“group claim” means a claim for group relief made by virtue of section 402(2);

“group/consortium company” means a company which is both a member of a group of companies and a company owned by a consortium;

“group relief” has the meaning given by section 402(1);

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

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

[<sup>F35</sup>(2A) For the purposes of group relief an accounting period of the claimant company which falls wholly or partly within an accounting period of the surrendering company shall be taken to correspond to that accounting period of the surrendering company.]

(3) <sup>M21</sup>For the purposes of this Chapter—

(a) two companies shall be deemed to be members of a group of companies if one is the 75 per cent. subsidiary of the other or both are 75 per cent. subsidiaries of a third company;

(b) “holding company” means a company the business of which consists wholly or mainly in the holding of shares or securities of companies which are its 90 per cent. subsidiaries and which are trading companies; and

(c) “trading company” means a company the business of which consists wholly or mainly in the carrying on of a trade or trades.

(4) In applying for the purposes of this Chapter the definition of “75 per cent. subsidiary” in section 838, any share capital of a registered industrial and provident society shall be treated as ordinary share capital.

(5) <sup>F36</sup>. . . in determining for the purposes of this Chapter whether one company is a 75 per cent. subsidiary of another, the other company shall be treated as not being the owner—

(a) of any share capital which it owns directly in a body corporate if a profit on a sale of the shares would be treated as a trading receipt of its trade; or

(b) of any share capital which it owns indirectly, and which is owned directly by a body corporate for which a profit on a sale of the shares would be a trading receipt;<sup>F36</sup> . . .

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

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- (6) <sup>M22</sup>References to a company being owned by a consortium shall be construed in accordance with paragraph (a) below except for the purposes of the definition of “group consortium company” in subsection (2) above and of sections [<sup>F37</sup>403ZA(3)], 406(1)(b) and 409(5), (6) and (7), and for those purposes shall be construed in accordance with paragraph (b) below—
- (a) a company is owned by a consortium if three-quarters or more of the ordinary share capital of the company is beneficially owned between them by companies of which none beneficially owns less than one-twentieth of that capital;
- (b) a company is owned by a consortium if—
- (i) it is either such a trading company as is referred to in paragraph (a) or (b) of subsection (3) of section 402 or such a holding company as is referred to in paragraph (c) of that subsection, and
- (ii) three-quarters or more of the ordinary share capital of the company or, in the case of a company within section 402(3)(b), of its holding company is beneficially owned between them by companies of which none beneficially owns less than one-twentieth of that capital;
- and the companies which so own three-quarters or more of that ordinary share capital are in this Chapter called the members of the consortium.
- (7) <sup>M23</sup>Notwithstanding that at any time a company (“the subsidiary company”) is a 75 per cent. subsidiary or a 90 per cent. subsidiary of another company (“the parent company”) it shall not be treated at that time as such a subsidiary for the purposes of this Chapter unless, additionally at that time—
- (a) the parent company is beneficially entitled to not less than 75 per cent. or, as the case may be, 90 per cent. of any profits available for distribution to equity holders of the subsidiary company; and
- (b) the parent company would be beneficially entitled to not less than 75 per cent. or, as the case may be, 90 per cent. of any assets of the subsidiary company available for distribution to its equity holders on a winding-up.
- (8) <sup>F38</sup> .....
- (9) <sup>F38</sup> .....
- (10) Schedule 18 shall have effect for supplementing this section.

#### Textual Amendments

- F35** S. 413(2A) inserted (with effect in accordance with Sch. 7 para. 9 of the amending Act) by Finance (No. 2) Act 1997 (c. 58), Sch. 7 para. 7
- F36** S. 413(5)(c) and preceding word repealed (with effect in accordance with Sch. 27 para. 6(4) of the repealing Act) by Finance Act 2000 (c. 17), Sch. 27 para. 2(2), Sch. 40 Pt. 2(11), Note 3
- F37** Words in s. 413(6) substituted (with effect in accordance with s. 38(2)(3) of the amending Act) by Finance Act 1998 (c. 36), Sch. 5 para. 38 (with Sch. 5 para. 73)
- F38** S. 413(8)(9) repealed (retrospectively) by Finance Act 2000 (c. 17), s. 100(3)(b)(5), Sch. 40 Pt. 2(11), Note 2

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

- C21** S. 413(6)(a) applied (retrospective to 5.11.1993) by Finance Act 1994 (c. 9), s. 252(2), Sch. 24 para. 17(7)

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#### **Marginal Citations**

- M20** Source—1970 s.258; 1985 Sch.9 1
- M21** Source—1970 s.258(5)-(7)
- M22** Source—1970 s.258(8); 1984 s.46(2); 1985 Sch.9 1(a)
- M23** Source—1973 s.28(2)-(5); 1981 s.40(5)

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