



# 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) <sup>M1</sup>Any loss incurred in a trade of farming or market gardening shall be excluded from section 380 if in each of the prior five years a loss [<sup>F1</sup>, computed without regard to capital allowances,] was incurred in carrying on that trade; <sup>F2</sup> . . . .
- (2) Any loss incurred in any accounting period by a company in carrying on a trade of farming or market gardening shall be excluded from section 393(2) if a loss, computed 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, if it is shown by the claimant—
  - (a) that 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) that, 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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*Status: Point in time view as at 03/05/1994. This version of this provision has been superseded.*

*Changes to legislation: Income and Corporation Taxes Act 1988, Section 397 is up to date with all changes known to be in force on or before 07 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

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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 [F3section 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 [F4section 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.

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#### **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** 1990(C) s.164 and Sch.1 para.8(18)(a). *Previously* "section 72 of the 1968 Act".
- F4** 1990(C) s.164 and Sch.1 para.8(18)(b). *Previously* "section 73(2) of the 1968 Act".
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#### **Marginal Citations**

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

**Status:**

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**Changes to legislation:**

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