Corporation Tax Act 2010

2010 CHAPTER 4

PART 4

LOSS RELIEF

CHAPTER 2

TRADE LOSSES

Introduction

36 Introduction to Chapter

(1) This Chapter—

- (a) provides relief against a company's total profits of an accounting period for a loss made by the company in a trade in that or a subsequent accounting period (see sections 37 to 44), and
- (b) provides relief against a company's profits of a trade of an accounting period for a loss made by the company in the trade in a previous accounting period (see sections 45 to 47).

(2) This Chapter also provides for restrictions on relief for the following cases—

- (a) farming or market gardening (sections 48 to 51),
- (b) dealings in commodity futures (section 52),
- (c) leasing contracts and company reconstructions (section 53), and
- (d) receipts of interest, dividends and royalties by a non-UK resident company (section 54).

(3) In this Chapter references to a company carrying on a trade are references to the company carrying on the trade so as to be within the charge to corporation tax in relation to the trade.

(4) In this Chapter, except in so far as the context otherwise requires—

(a) references to a trade include an office, and
(b) references to carrying on a trade include holding an office.

Trade loss relief against total profits

37 Relief for trade losses against total profits

(1) This section applies if, in an accounting period, a company carrying on a trade makes a loss in the trade.

(2) The company may make a claim for relief for the loss under this section (but see subsection (5)).

(3) If the company makes a claim, the relief is given by deducting the loss from the company's total profits of—
(a) the accounting period in which the loss is made ("the loss-making period"), and
(b) if the claim so requires, previous accounting periods so far as they fall (wholly or partly) within the period of 12 months ending immediately before the loss-making period begins.

(4) The amount of a deduction to be made under subsection (3) for any accounting period is the amount of the loss so far as it cannot be deducted under that subsection for a subsequent accounting period.

(5) The company may not make a claim if, in the loss-making period, the company carries on the trade wholly outside the United Kingdom.

(6) A deduction under subsection (3)(b) may be made for an accounting period only if the company—
(a) carried on the trade in the period, and
(b) did not do so wholly outside the United Kingdom.

(7) The company's claim must be made—
(a) within the period of two years after the end of the loss-making period, or
(b) within such further period as an officer of Revenue and Customs may allow.

(8) If, for an accounting period, deductions under subsection (3) are to be made for losses of different accounting periods, the deductions are to be made in the order in which the losses were made (starting with the earliest loss).

(9) Relief under this section is subject to restriction or modification in accordance with provisions of the Corporation Tax Acts.

Modifications etc. (not altering text)

C1 S. 37 applied (with effect in accordance with s. 148 of the amending Act) by Finance Act 2012 (c. 14), **s. 123** (with s. 147, Sch. 17(34))

C2 S. 37(3)(b) applied (with modifications) by 2009 c. 10, Sch. 6 para. 3(1) (as substituted (with effect in accordance with s. 1184(1) of the amending Act) by Corporation Tax Act 2010 (c. 4), s. 1184(1), **Sch. 1 para. 714(2)** (with Sch. 2))

38 Limit on deduction if accounting period falls partly within 12 month period

(1) This section applies if an accounting period falls partly within the period of 12 months mentioned in section 37(3)(b).

(2) The amount of the deduction for the loss for the accounting period is not to exceed an amount equal to the overlapping proportion of the company's total profits of that period.

(3) The overlapping proportion is the same as the proportion that the part of the accounting period falling within the period of 12 months bears to the whole of the accounting period.

Modifications etc. (not altering text)

C3 S. 38(1) applied (with modifications) by 2009 c. 10, Sch. 6 para. 3(1) (as substituted (with effect in accordance with s. 1184(1) of the amending Act) by Corporation Tax Act 2010 (c. 4), s. 1184(1), **Sch. 1 para. 714(2)** (with Sch. 2))

C4 S. 38(3) applied (with modifications) by 2009 c. 10, Sch. 6 para. 3(1) (as substituted (with effect in accordance with s. 1184(1) of the amending Act) by Corporation Tax Act 2010 (c. 4), s. 1184(1), **Sch. 1 para. 714(2)** (with Sch. 2))

39 Terminal losses: extension of periods for which relief may be given

(1) This section applies if—
- (a) a company ceases to carry on a trade, and
- (b) the company has made a terminal loss in the trade.

(2) Sections 37(3)(b) and 38(1) and (3) have effect in relation to the terminal loss as if the references to 12 months were references to 3 years.

(3) The following are terminal losses made in the trade—
- (a) the whole of any loss made by the company in the trade in an accounting period that begins during the final 12 months, and
- (b) the overlapping proportion of any loss made by the company in the trade in an accounting period that ends, but does not begin, during the final 12 months.

(4) The overlapping proportion is the same as the proportion that the part of the accounting period falling within the final 12 months bears to the whole of the accounting period.

(5) "The final 12 months" means the period of 12 months ending when the company ceases to carry on the trade.

(6) This section is subject to section 41.

40 Ring fence trades: extension of periods for which relief may be given

(1) This section applies if—
- (a) in an accounting period a company makes a loss in a ring fence trade (as defined in section 162 of CAA 2001),
- (b) the accounting period is an accounting period **[**[F1]for which any allowances under section 164 or 403 of CAA 2001 are made to the company in respect of decommissioning expenditure**]**, and

(c) not all the loss is a terminal loss (see section 39(3) above).

(2) Sections 37(3)(b) and 38(1) and (3) have effect in relation to the loss (so far as it is not a terminal loss) as if the references to 12 months were references to 3 years.

(3) But if the loss exceeds **[**[F2]the sum of the allowances**]** mentioned in subsection (1)(b), subsection (2) applies in relation to the loss only so far as it does not exceed **[**[F3]that amount**]**.

[[F4](3A) In this section "decommissioning expenditure" has the meaning given by section 330C.**]**

(4) This section is subject to section 41.

Textual Amendments

F1 Words in s. 40(1)(b) substituted (with effect in accordance with Sch. 21 para. 6 of the amending Act) by Finance Act 2012 (c. 14), **Sch. 21 para. 5(2)**

F2 Words in s. 40(3) substituted (with effect in accordance with Sch. 21 para. 6 of the amending Act) by Finance Act 2012 (c. 14), **Sch. 21 para. 5(3)(a)**

F3 Words in s. 40(3) substituted (with effect in accordance with Sch. 21 para. 6 of the amending Act) by Finance Act 2012 (c. 14), **Sch. 21 para. 5(3)(b)**

F4 S. 40(3A) inserted (with effect in accordance with Sch. 21 para. 6 of the amending Act) by Finance Act 2012 (c. 14), **Sch. 21 para. 5(4)**

41 Sections 39 and 40: transfers of trade to obtain relief

Sections 39 and 40 do not apply by reason of a company ceasing to carry on a trade if—

(a) on the company ceasing to carry on the trade, any of the activities of the trade begin to be carried on by a person who is not (or by persons any or all of whom are not) within the charge to corporation tax, and

(b) the company's ceasing to carry on the trade is part of a scheme or arrangement the main purpose, or one of the main purposes, of which is to secure that either or both of those sections apply in relation to a loss by reason of the cessation.

42 Ring fence trades: further extension of period for relief

(1) This section applies if—

(a) a company makes a claim under section 37 for relief in respect of a loss made in a ring fence trade,

(b) the claim is made by virtue of section 39 or 40, and

(c) a part of the loss that is eligible for relief under section 37 cannot be so relieved because there are not enough profits from which the loss may be deducted under that section.

(2) Relief for the part of the loss that cannot be relieved under section 37 ("the unrelieved loss") is given to the company under this section.

(3) The relief is given by deducting the unrelieved loss from the profits of the ring fence trade of an accounting period that—

(a) falls wholly or partly before the three year relief period, and

(b) ends on or after 17 April 2002.

(4) The amount of a deduction to be made under subsection (3) for any accounting period is so much of the unrelieved loss as cannot be deducted under that subsection from profits of the ring fence trade of a subsequent accounting period (but this is subject to subsections (5) and (6)).

(5) In the case of an accounting period that falls partly before the 3 year relief period, the amount given by subsection (4) is to be reduced by the proportion which the part of the accounting period falling within the 3 year relief period bears to the whole of the accounting period.

(6) In the case of an accounting period that falls partly before 17 April 2002, the amount given by subsection (4) is to be reduced by the proportion which the part of the accounting period falling before that date bears to the whole of the accounting period.

(7) If, for an accounting period, deductions under subsection (3) are to be made for losses of different accounting periods, the deductions are to be made in the order in which the losses were made (starting with the earliest first).

(8) In this section—

“ring fence trade” has the same meaning as in section 162 of CAA 2001, and

“3 year relief period” means the period of 3 years that applies to a claim under section 37 by virtue of section 39 or 40.

43 Claim period in case of ring fence or mineral extraction trades

(1) This section applies in relation to a claim under section 37 if—

(a) as a result of section 165 of CAA 2001 (general decommissioning expenditure after ceasing ring fence trade) a company's qualifying expenditure for the accounting period in which it ceases to carry on a ring fence trade (as defined in section 162 of that Act) is increased by any amount, or

(b) as a result of section 416 of CAA 2001 (expenditure on restoration within 3 years of ceasing to carry on mineral extraction trade) any expenditure is treated as qualifying expenditure of a company incurred on the last day of trading.

(2) So far as the claim relates to the increase mentioned in subsection (1)(a), the period of two years specified in section 37(7)(a) for making the claim is instead to be read as a reference to the period given by adding two years to the post-cessation period (within the meaning of section 165 of CAA 2001).

(3) So far as the claim relates to the expenditure mentioned in subsection (1)(b), the period of two years specified in section 37(7)(a) for making the claim is instead to be read as a reference to a period of 5 years.

44 Trade must be commercial or carried on for statutory functions

(1) Relief under section 37 is not available for a loss made in a trade unless for the loss-making period (see section 37(3)(a)) the trade is carried on—

(a) on a commercial basis, and

(b) with a view to the making of a profit in the trade or so as to afford a reasonable expectation of making such a profit.

(2) References in subsection (1)(b) to a profit in the trade include references to a profit in any larger undertaking of which the trade forms part.

(3) If during the loss-making period there is a change in the way in which the trade is carried on, it is treated as having been carried on throughout that period in the way in which it is being carried on by the end of that period.

(4) The restriction on relief under this section does not apply if the trade is a trade carried on in the exercise of functions conferred by or under an Act (including an Act of the Scottish Parliament).

Carry forward of trade loss relief

45 Carry forward of trade loss against subsequent trade profits

(1) This section applies if, in an accounting period, a company carrying on a trade makes a loss in the trade.

(2) Relief for the loss is given to the company under this section.

(3) The relief is given for that part of the loss for which no relief is given under section 37 or 42 ("the unrelieved loss").

(4) For this purpose—
- (a) the unrelieved loss is carried forward to subsequent accounting periods (so long as the company continues to carry on the trade), and
- (b) the profits of the trade of any such period are reduced by the unrelieved loss so far as that loss cannot be used under this paragraph to reduce the profits of an earlier period.

(5) In this section and section 46 references to profits of the trade are references to profits of the trade chargeable to corporation tax.

(6) Relief under this section is subject to restriction or modification in accordance with provisions of the Corporation Tax Acts.

46 Use of trade-related interest and dividends if insufficient trade profits

(1) This section applies for the purposes of section 45 if—
- (a) the company carries on the trade in an accounting period ("the later period"), and
- (b) relief cannot be fully given in the later period for the unrelieved loss (or for that loss so far as it cannot be relieved in earlier periods) because there are no profits, or insufficient profits, of the trade of the later period.

(2) Treat any interest or dividends within subsection (3) as profits of the trade of the later period.

(3) Interest or dividends are within this subsection if they—
- (a) are from investments, and
- (b) would be brought into account as trading receipts in calculating the profits of the trade of the later period but for the fact that they have been subjected to tax under other provisions of the Tax Acts.

47 Registered industrial and provident societies

(1) This section applies for the purposes of section 45 if the company carrying on the trade is a registered industrial and provident society.

(2) The following amounts may be brought into account in calculating the profits of the trade—

(a) amounts to which the charge to corporation tax on income applies under section 299 of CTA 2009 (charge to tax on non-trading profits from loan relationships), and

(b) amounts arising from possessions out of the United Kingdom to which the charge to corporation tax on income applies under section 933 of CTA 2009 (dividends of non-UK resident company) or under section 974 of that Act (income arising from foreign holdings).

Restrictions on relief: farming or market gardening

48 Farming or market gardening

(1) This section applies if a loss is made in a trade of farming or market gardening in an accounting period ("the current period").

(2) Relief under section 37 is not available for the loss if a loss, calculated without regard to capital allowances, was made in the trade—

(a) in the current period, and

(b) in each accounting period falling wholly or partly within the period of 5 years ("the prior 5 years") ending immediately before the current period begins.

(3) But this section does not prevent relief for the loss from being available if—

(a) the carrying on of the trade forms part of, and is ancillary to, a larger trading undertaking,

(b) the farming or market gardening activities meet the reasonable expectation of profit test (see section 49), or

(c) the trade was started, or treated as started, during the prior 5 years (see section 50).

(4) A loss in a trade is calculated without regard to capital allowances by ignoring—

(a) the allowances treated as expenses of the trade under CAA 2001, and

(b) the charges treated as receipts of the trade under CAA 2001.

49 Reasonable expectation of profit

(1) This section explains how the farming or market gardening activities ("the activities") meet the reasonable expectation of profit test for the purposes of section 48(3)(b).

(2) The test is decided by reference to the expectations of a competent farmer or market gardener (a "competent person") carrying on the activities.

(3) The test is met if—

(a) a competent person carrying on the activities in the year ("the current year") after the prior 5 years would reasonably expect future profits (see subsection (4)), but

(b) a competent person carrying on the activities at the start of the prior period of loss (see subsection (5)) could not reasonably have expected the activities to become profitable until after the end of the current year.

(4) In determining whether a competent person carrying on the activities in the current year would reasonably expect future profits, regard must be had to—
(a) the nature of the whole of the activities, and
(b) the way in which the whole of the activities were carried on in the current year.

(5) "The prior period of loss" means—
(a) the prior 5 years, or
(b) if subsection (6) applies, the period made up of the successive accounting periods taken together as mentioned in that subsection.

(6) This subsection applies if—
(a) losses in the trade, calculated without regard to capital allowances (see section 48(4)), were made in successive accounting periods before the current year, and
(b) taken together those accounting periods amount to a period of more than 5 years ending at the end of the prior 5 years.

50 Cessation of trades

(1) For the purposes of section 48(3)(c) a trade is to be treated as ceased, and a new trade as started, in any of the following cases—

Case 1

A company starts or ceases to be within the charge to corporation tax in respect of a trade.

Case 2

There is a change in the persons carrying on a trade which involves all of the persons carrying it on before the change permanently ceasing to carry it on.

Case 3

There is a change in the persons carrying on a trade and—
(a) immediately before the change, the trade is carried on by persons who include a company, and
(b) after the change, no company that carried on the trade in partnership immediately before the change continues to carry it on in partnership.

Case 4

There is a change in the persons carrying on a trade and—
(a) immediately before the change, no company carries on the trade in partnership, and
(b) immediately after the change, the trade is carried on in partnership by persons who include a company.

(2) Subsection (1) is subject to subsections (3) and (4).

(3) A trade is not to be treated as ceased if the change in the persons carrying on the trade is a transfer to which Chapter 1 of Part 22 applies (transfers of trade without a change of ownership).

(4) In determining if there is a change in the persons carrying on a trade, subsection (1) is subject to the following rules—

Rule 1

A husband and wife are treated as the same person.

Rule 2

Individuals who are civil partners of each other are treated as the same person.

Rule 3

A husband or wife is treated as the same person as—

(a) a company of which either of them has control, or

(b) a company of which both have control.

Rule 4

An individual's civil partner is treated as the same person as—

(a) a company of which either of the civil partners has control, or

(b) a company of which both have control.

(5) In subsection (4) "control" has the same meaning as in section 450.

51 Companies treated as same person as individual

(1) This section applies for the purposes of sections 48(2) and 49(6) if, as a result of section 50(4), a company is treated as the same person as an individual.

(2) A loss in an accounting period may be determined by reference to profits and losses made by the individual in the trade in tax years (within the meaning of the Income Tax Acts).

(3) For this purpose—

(a) profits and losses made by the individual in tax years may be allocated (in whole or in part) to accounting periods in a way that is just and reasonable, and

(b) if a tax year or part of a tax year is not covered by any accounting period—

(i) the period covered by the tax year or part may be treated as if it were an accounting period, and

(ii) in accordance with paragraph (a), profits and losses may be allocated to it.

(4) Section 70(2), (3)(a), (4)(a) and (5) of ITA 2007 applies for the purpose of determining the individual's profits and losses in the trade for tax years.

Restrictions on relief: commodity futures

52 Dealings in commodity futures

(1) This section applies if—

(a) a company makes a loss in a trade of dealing in commodity futures,

(b) the company carried on the trade as a partner in a partnership, and

(c) a scheme has been effected or arrangements within subsection (3) have been made (whether by the partnership agreement or otherwise).

(2) Relief under section 37 is not available for the loss.

(3) Arrangements are within this subsection if as a result of them the sole or main benefit that might be expected to arise to the company from the company's interest in the partnership is the obtaining of a reduction in tax liability by means of relief under section 37.

(4) If relief is given in a case to which this section applies, the relief is withdrawn by the making of an assessment to corporation tax under this section.

(5) "Commodity futures" means commodity futures that are for the time being dealt in on a recognised futures exchange (as defined in section 288(6) of TCGA 1992).

Other restrictions on relief

53 Leasing contracts and company reconstructions

(1) This section applies if—

(a) under a contract a company ("the leasing company") incurs capital expenditure on the provision of plant or machinery,

(b) the leasing company lets that plant or machinery to another person under another contract ("the leasing contract"),

(c) a first-year allowance (within the meaning of Part 2 of CAA 2001) in relation to the capital expenditure is made to the leasing company for an accounting period ("the allowance period"),

(d) arrangements within subsection (3) are in place in the allowance period, and

(e) apart from this section, relief under section 37 or 45 would be available to the leasing company in relation to losses made on the leasing contract.

(2) In the allowance period and any subsequent accounting period, no relief is available to the leasing company as mentioned in subsection (1)(e) except against profits (if any) arising under the leasing contract.

(3) Arrangements are within this subsection if, as a result of them, a successor company will be able to carry on, at some time during or after the allowance period, any part of the leasing company's trade which includes the performance of all or any of the obligations which (apart from the arrangements) would be the leasing company's obligations under the leasing contract.

(4) A company ("company S") is a successor company if—

(a) Chapter 1 of Part 22 applies in relation to the leasing company and company S as, respectively, the predecessor and the successor within the meaning of that Chapter, or

(b) the leasing company and company S are connected with each other.

(5) "Arrangements" means arrangements of any kind (whether or not in writing).

(6) For the purposes of this section, calculate losses made on the leasing contract and profits arising under that contract as if—

(a) the performance of that contract were a trade carried on by the leasing company separately from any other trade carried on by it, and

(b) the leasing company started carrying on that separate trade at the commencement of the letting under that contract.

(7) In determining if relief is available to the leasing company as mentioned in subsection (1)(e), any losses made on the leasing contract are treated as made in a trade carried on by the leasing company separately from any other trade carried on by it.

54 Non-UK resident company: receipts of interest, dividends or royalties

(1) This section applies if—

(a) a non-UK resident company carries on a trade in the United Kingdom, and

(b) tax-exempt receipts of interest, dividends or royalties arise to the company.

(2) The receipts are not to be excluded from the profits of the trade so as to give rise to a loss to be deducted under **[**[F5]section 37 or 45**]**.

(3) For the purposes of subsection (1) a receipt is "tax-exempt" if it has been treated as tax-exempt under arrangements having effect under section 2 of TIOPA 2010.

Textual Amendments

F5 Words in s. 54(2) substituted (17.7.2012) by Finance Act 2012 (c. 14), **Sch. 16 para. 217**

Status:
Point in time view as at 17/07/2012.

Changes to legislation:
Corporation Tax Act 2010, Chapter 2 is up to date with all changes known to be in force on or before 26 June 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.