



Income and Corporation Taxes Act 1988

1988 CHAPTER 1

PART X

LOSS RELIEF AND GROUP RELIEF

CHAPTER II

LOSS RELIEF: CORPORATION TAX

Trade etc. losses

393 Losses other than terminal losses

- (1) Where in any accounting period a company carrying on a trade incurs a loss in the trade, the company may make a claim requiring that the loss be set off for the purposes of corporation tax against any trading income from the trade in succeeding accounting periods; and (so long as the company continues to carry on the trade) its trading income from the trade in any succeeding accounting period shall then be treated as reduced by the amount of the loss, or by so much of that amount as cannot, on that claim or on a claim (if made) under subsection (2) below, be relieved against income or profits of an earlier accounting period.
- (2) Subject to section 492(2), where in any accounting period ending after 5th April 1988 a company carrying on a trade incurs a loss in the trade, then (subject to subsection (5) below) the company may make a claim requiring that the loss be set off for the purposes of corporation tax against profits (of whatever description) of that accounting period and, if the company was then carrying on the trade and the claim so requires, of preceding accounting periods ending within the time specified in subsection (3) below; and, subject to that subsection and to any relief for an earlier loss, the profits of any of those periods shall then be treated as reduced by the amount of the loss, or by so much of that amount as cannot be relieved under this subsection against profits of a later accounting period.

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- (3) The time referred to in subsection (2) above is a time equal in length to the accounting period in which the loss is incurred; but the amount of the reduction which may be made under that subsection in the profits of an accounting period falling partly before that time shall not exceed a part of those profits proportionate to the part of the period falling within that time.
- (4) Where a company incurs a loss in a trade in an accounting period for which one or more first-year allowances fall to be made to it under Chapter I of Part III of the Finance Act 1971 in respect of expenditure on the provision for the purposes of the trade of machinery or plant, subsections (2) and (3) above shall have effect in relation to so much of the loss as does not exceed the allowance or allowances which are so made as if the time specified in subsection (3) above were a period of three years ending immediately before the accounting period in which the loss is incurred.
- (5) Subsection (2) above shall not apply to trades falling within Case V of Schedule D; and, except in so far as it represents an excess in respect of expenditure incurred before the year 1960-61 of capital allowances over balancing charges, a loss incurred in a trade in any accounting period shall not be relieved under that subsection unless the trade is one carried on in the exercise of functions conferred by or under any enactment (including an enactment contained in a local or private Act), or it is shown that for that accounting period the trade was being carried on on a commercial basis and with a view to the realisation of gain in the trade or in any larger undertaking of which the trade formed part.

This subsection has effect without prejudice to section 397.

- (6) For the purposes of subsection (5) above, the fact that a trade was being carried on at any time so as to afford a reasonable expectation of gain shall be conclusive evidence that it was then being carried on with a view to the realisation of gain; and where in an accounting period there is a change in the manner in which a trade is being carried on, it shall for those purposes be treated as having throughout the accounting period been carried on in the way in which it was being carried on by the end of that period.
- (7) The amount of a loss incurred in a trade in an accounting period shall be computed for the purposes of this section in the same way as trading income from the trade in that period would have been computed.
- (8) For the purposes of this section “trading income” means, in relation to any trade, the income which falls or would fall to be included in respect of the trade in the total profits of the company; but where—
- (a) in an accounting period a company incurs a loss in a trade in respect of which it is within the charge to corporation tax under Case I or V of Schedule D, and
 - (b) in any later accounting period to which the loss or any part of it is carried forward under subsection (1) above relief in respect thereof cannot be given, or cannot wholly be given, because the amount of the trading income of the trade is insufficient,
- any interest or dividends on investments which would fall to be taken into account as trading receipts in computing that trading income but for the fact that they have been subjected to tax under other provisions shall be treated for the purposes of subsection (1) above as if they were trading income of the trade.
- (9) Where in an accounting period the charges on income paid by a company—
- (a) exceed the amount of the profits against which they are deductible, and

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- (b) include payments made wholly and exclusively for the purposes of a trade carried on by the company,
- then, up to the amount of that excess or of those payments, whichever is the less, the charges on income so paid shall in computing a loss for the purposes of subsection (1) above be deductible as if they were trading expenses of the trade.
- (10) In this section references to a company carrying on a trade refer to the company carrying it on so as to be within the charge to corporation tax in respect of it.
- (11) A claim under subsection (1) above must be made within six years after the end of the accounting period in which the loss is incurred, and must be so made notwithstanding that relief cannot be given in respect of the loss until after the end of that period of six years; and a claim under subsection (2) above must be made within two years from the end of the accounting period in which the loss is incurred.

394 Terminal losses

- (1) Where a company ceasing to carry on a trade after 5th April 1988 has in any accounting period falling wholly or partly within the previous 12 months incurred a loss in the trade, the company may make a claim requiring that the loss be set off for the purposes of corporation tax against trading income from the trade in accounting periods falling wholly or partly within the three years preceding those 12 months (or within any less period throughout which the company has carried on the trade); and, subject to subsections (2) to (6) below and to any relief for earlier losses, the trading income of any of those periods shall be then treated as reduced by the amount of the loss, or by so much of that amount as cannot be relieved under this subsection against income of a later accounting period.
- (2) Relief under subsection (1) above shall not be given in respect of any loss in so far as the loss has been or can be otherwise taken into account so as to reduce or relieve any charge to tax.
- (3) Where a loss is incurred in an accounting period falling partly outside the 12 months mentioned in subsection (1) above, relief shall be given under that subsection in respect of a part only of that loss proportionate to the part of the period falling within those 12 months; and the amount of the reduction which may be made under that subsection in the trading income of an accounting period falling partly outside the three years there mentioned shall not exceed a part of that income proportionate to the part of the period falling within those three years.
- (4) A claim for relief under this section may require that capital allowances in respect of the trade, being allowances which fall to be made to the company by way of discharge or repayment of tax, and to be so made for an accounting period falling wholly or partly within the 12 months ending when the company ceases to carry on the trade, shall (so far as they cannot be otherwise taken into account so as to reduce or relieve any charge to corporation tax) be added to the loss incurred by the company in that accounting period or, if the company has not incurred a loss in the period, shall be treated as a loss so incurred.

For the purposes of this subsection the allowances for any period shall not be treated as including amounts carried forward from an earlier period.

- (5) Subsections (7) to (10) of section 393 shall apply for the purposes of this section as they apply for the purposes of subsection (1) of that section; and relief shall not be given under this section in respect of a loss incurred in a trade so as to interfere with

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any relief under section 338 in respect of payments made wholly and exclusively for the purposes of that trade.

- (6) A claim under this section must be made within six years from the time when the company ceases to carry on the trade.

395 Leasing contracts and company reconstructions

- (1) Subject to the provisions of this section, if—
- (a) under a contract entered into on or after 6th March 1973 a company (“the first company”) incurs capital expenditure on the provision of machinery or plant which the first company lets to another person by another contract (a “leasing contract”); and
 - (b) apart from this subsection, the first company would be entitled to claim relief under subsection (1) or (2) of section 393 in respect of losses incurred on the leasing contract; and
 - (c) in the accounting period for which a first-year allowance, within the meaning of Chapter I of Part III of the Finance Act 1971, in respect of the expenditure referred to in paragraph (a) above is made to the first company, arrangements are in existence by virtue of which, at some time during or after the expiry of that accounting period, a successor company will be able to carry on any part of the first company’s trade which consists of or includes the performance of all or any of the obligations which, apart from the arrangements, would be the first company’s obligations under the leasing contract,
- then, in the accounting period specified in paragraph (c) above and in any subsequent accounting period, the first company shall not be entitled to claim relief as mentioned in paragraph (b) above except in computing its profits (if any) arising under the leasing contract.
- (2) For the purposes of this section a company is a successor of the first company if the circumstances are such that—
- (a) section 343 applies in relation to the first company and the other company as the predecessor and the successor within the meaning of that section; or
 - (b) the two companies are connected with each other within the terms of section 839.
- (3) For the purposes of this section losses incurred on a leasing contract and profits arising under such a contract shall be computed as if the performance of the leasing contract were a trade begun to be carried on by the first company, separately from any other trade which it may carry on, at the commencement of the letting under the leasing contract.
- (4) In determining whether the first company would be entitled to claim relief as mentioned in subsection (1)(b) above, any losses incurred on the leasing contract shall be treated as incurred in a trade carried on by that company separately from any other trade which it may carry on.
- (5) In this section “arrangements” means arrangements of any kind whether in writing or not.

Case VI losses

396 Case VI losses

- (1) Subject to subsection (2) below, where in any accounting period a company incurs a loss in a transaction in respect of which the company is within the charge to corporation tax under Case VI of Schedule D, the company may make a claim requiring that the loss be set off against the amount of any income arising from transactions in respect of which the company is assessed to corporation tax under that Case for the same or any subsequent accounting period; and the company's income in any accounting period from such transactions shall then be treated as reduced by the amount of the loss, or by so much of that amount as cannot be relieved under this section against income of an earlier accounting period.
- (2) This section shall not apply to a loss incurred in a transaction falling within section 34, 35 or 36.
- (3) A claim under this section must be made within six years after the end of the accounting period in which the loss is incurred and must be so made notwithstanding that relief cannot be given in respect of the loss until after the end of that period of six years.