

CORPORATION TAX ACT 2010

EXPLANATORY NOTES

INTRODUCTION

Part 4: Loss relief

Overview

152. This Part contains rules relating to various reliefs available for losses.
153. The reliefs are set out in separate Chapters.
154. The source legislation dealt with the carry forward of trade losses (section 393 of ICTA) before set off against total profits of the same accounting period or carry back (section 393A of ICTA). In practice companies tend to prefer to set losses off against total profits or carry them back rather than carry them forward. The rewritten legislation reflects this practice by dealing first with the set-off against total profits and carry back, from section 37 onwards, and then turning to the carry forward of losses in section 45.

Chapter 1: Introduction

Section 35: Overview of Part

155. This section provides an overview of the Part. It is new.
156. *Subsection (3)* refers to section 47 of CTA 2009 which is reproduced here in order to avoid the need to cross-refer to that Act:
 - (1) “The same rules apply for corporation tax purposes in calculating losses of a trade as apply in calculating profits.
 - (2) This is subject to any express provision to the contrary.

Chapter 2: Trade losses

Overview

157. This Chapter deals with relief for trading losses.

Section 36: Introduction to Chapter

158. This section provides an overview of the Chapter and also includes provision about the meaning of references to “trade” and “carrying on a trade”. In particular it carries forward the effect of sections 6(4)(b) and 834(2) of ICTA in providing that a “trade” includes an office. It is based on sections 6(4), 393(10), 393A(9) and 834(2) of ICTA.

Section 37: Relief for trade losses against total profits

159. This section explains how a loss in a trade may be relieved against total profits of the same or earlier periods. It is based on sections 6(4), 393A(1), (2), (3), (10) and 834(2) of ICTA.
160. *Subsection (3)(b)* establishes that a loss in trade may be carried back to the twelve month period prior to the accounting period in which the loss arose. The exceptions to this rule, where the carry-back period is extended, are set out in sections 39 to 42. These exceptions affect companies either rarely or not at all.
161. *Subsection (4)* deals with the order of set-off of losses claimed under subsection(3). Such losses must first be set against total profits of the loss making period before, if the claim so requires, being carried back to earlier periods. Where it is possible to carry a loss back for more than one period (see sections 39 to 42) then the loss must be set against total profits of the most recent period before the balance of the loss can be carried back to the period preceding that period and so on.
162. *Subsections (5) and (6)* prohibit the carry back of losses from what used to be Case V trades but what are now referred to as trades “carried on wholly outside the United Kingdom”. The courts established that a Case V trade was one that was carried on wholly outside the United Kingdom.
163. *Ogilvie v Kitton (Surveyor of Taxes) (1908), 5 TC 338*, Court of Exchequer (Scotland) determined that where a trade is “carried on” depends not only on the location of the day-to-day transactions of the trade but also on where the management and control of the company takes place. In the case of a company where the directors are responsible for management and control and that management and control function is exercised in the United Kingdom it is very unlikely that the company has a trade “carried on wholly outside the United Kingdom”.
164. There is, however, one situation where a company managed and controlled in the United Kingdom may have a trade carried on wholly outside the United Kingdom. That is where the company is a partner in a partnership and the business of the partnership is managed and controlled abroad. By using the words “carried on” in the section the link with existing case law has been maintained.
165. *Subsection (7)* sets out the time limits for making a claim. The time limit may be extended by an officer of Revenue and Customs. See *Change 5* in Annex 1.
166. *Subsection (9)* provides that relief is subject to restriction or modification in accordance with provisions of the Corporation Tax Acts. Examples of such restrictions or modifications are to be found in:
- the rest of the Chapter;
 - Chapter 3 of this Part (relief for losses in cases involving limited partnerships and limited liability partnerships);
 - Section 304(relief for losses in relation to oil activities);
 - Section 944 (modified application of Chapter 2 of Part 4 in relation to transfers of trade without a change in ownership); and
 - Chapter 3 of Part 22 (relief for losses if company is a member of a partnership and certain arrangements for transferring relief are in place).
167. Subsection (2D) of section 393A has not been rewritten. The subsection was a signpost to section 393B where certain provisions relating to losses arising in a ring fence trade applied. The structure of the rewritten section makes such a signpost unnecessary.

168. Subsections (7), (7A) and (8) of section 393A have not been rewritten. These subsections dealt with excess trade charges. It is no longer possible for trade charges to arise and these subsections were therefore redundant.
169. The definition of charges in section 338A of ICTA was limited to qualifying donations to charity. To be added to trade losses (section 393(9) of ICTA) the charges must have been payments made wholly and exclusively for the purposes of the trade. Section 338A(3) stipulated that no payment that was deductible in computing profits should be treated as a charge. If a payment was made wholly and exclusively for the purposes of the trade it would be allowable as a deduction in computing profits. Hence, it could not be a charge.

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

170. Where a loss is being relieved against the profits of an earlier accounting period this section limits the relief available if that period falls partly within the twelve month period prior to the loss-making period. It is based on section 393A(2) of ICTA.
171. The effect of this section can be illustrated as follows:

Example

Accounting period 3	12m	01/01/11 to 31/12/11	Loss in trade	£24,000
Accounting period 2	8m	01/05/10 to 31/12/10	Total profits	£12,000
Accounting period 1	12m	01/05/09 to 30/04/10	Total profits	£15,000

The twelve month period prior to the loss making period is 01/01/10 to 31/12/10. Accounting period 2 falls wholly within this period and the loss in trade is sufficient to cover all of the total profits of this period. £12,000 of the loss in trade remains to be relieved. The proportion of Accounting period 1 that falls within the relevant twelve month period is 4/12. 4/12 of the total profits of Accounting period 1 is £5,000. Accordingly the amount to be deducted under section 37(3) cannot exceed £5,000. This means that £7,000 of the loss in trade arising in Accounting period 3 cannot be relieved under section 37.

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

172. This section extends the length of the period referred to in section 37(3)(b) when a company ceases to trade and makes a terminal loss. It is based on section 393A(2A) and (2B) of ICTA.
173. The entitlement to make a claim remains an entitlement under section 37. If a loss has already been fully utilised under that section there is no possibility of relieving that loss again by virtue of the fact that it is a terminal loss within section 39.

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

174. This section extends the length of the period referred to in section 37(3)(b) when a company makes a loss in a ring fence trade and certain conditions are met. It is based on section 393A(2A), (2C) and (12) of ICTA.
175. The definition of a “ring fence trade” is to be found in section 162 of CAA. Broadly, such a trade is one concerned with oil extraction activities.
176. *Subsection (1)(b)* provides that in the loss-making period the company must have received an allowance under section 164 of CAA. Such an allowance is given in relation to expenditure incurred on the decommissioning of plant or machinery used in a ring fence trade.

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

177. This section prevents the transfer of terminal losses in certain circumstances. It is an anti-avoidance provision. It is based on section 393A(2E) of ICTA.

Section 42: Ring fence trades: further extension of period for relief

178. This section extends the period of relief for ring fence trades in certain circumstances. It is based on section 393B of ICTA.
179. For the section to apply a claim must have been made under section 39 (terminal losses: extension of periods for which relief may be given) or section 40 (ring fence trades: extension of periods for which relief may be given). The normal relief period is therefore already extended from twelve months to three years.
180. If there are insufficient profits in the three year relief period this section allows the unrelieved loss to be carried back to earlier periods.
181. The intention is to provide relief for losses arising as a consequence of incurring expenditure on decommissioning costs.
182. If decommissioning expenditure is incurred and a loss arises after the ring fence trade has ceased then no claim to relief would at first sight appear to be possible. A claim under section 39 would fail as the loss did not arise in an accounting period that commenced in the final twelve months of a company's trade. A claim under section 40 would fail as the loss did not arise in a ring fence trade (that trade having ceased). But that analysis of section 39 overlooks section 165 of CAA. This treats post-cessation decommissioning expenditure as having been incurred in the chargeable period in which the trader ceased to carry on the trade. As a result a claim under section 39 (terminal losses: extension of periods for which relief may be given) is possible.

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

183. This section extends the time limit for making claims under section 37 where the company has carried on a ring fence trade or a mineral extraction trade and certain conditions are met. It is based on section 393A(11) to (12) of ICTA.

Section 44: Trade must be commercial or carried on for statutory functions

184. This section denies relief in relation to losses arising from trades which are not commercial. It is based on section 393A(3) and (4) of ICTA.
185. *Subsection (1)* refers to the making of a profit in the trade. "Profit" in this instance, as the context suggests, has its ordinary commercial meaning.
186. *Subsection (2)* provides for the case where the trade is carried on as part of a larger undertaking. In such a case the larger undertaking (that is, the undertaking as a whole) may be carried on with a view to the realisation of profits even if the trade itself is not.
187. In *subsection (4)* the reference to an Act includes Acts of the Scottish Parliament. See *Change 6* in Annex 1.

Section 45: Carry forward of trade loss against subsequent trade profits

188. This section provides for trade losses which have not been relieved in accordance with section 37 to be carried forward and relieved against future trade profits. It is based on section 393 of ICTA.
189. *Subsection (6)* provides that relief is subject to restriction or modification in accordance with provisions of the Corporation Tax Acts. Examples of such restrictions or modifications are to be found in:

- the rest of the Chapter;
 - Chapter 7 of this Part (write-off of government investment in a company); and
 - Chapter 3 of Part 22 (relief for losses if company is a member of a partnership and certain arrangements for transferring relief are in place).
190. Subsection (9) of section 393 has not been rewritten. The subsection dealt with excess trade charges. It is no longer possible for trade charges to arise and this subsection is therefore redundant.
191. The definition of charges in section 338A of ICTA was limited to qualifying donations to charity. To be added to trade losses (section 393(9) of ICTA) the charges must have been payments made wholly and exclusively for the purposes of the trade. Section 338A(3) stipulated that no payment that was deductible in computing profits should be treated as a charge. If a payment was made wholly and exclusively for the purposes of the trade it would be allowable as a deduction in computing profits. Hence, it could not be a charge.

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

192. This section provides that certain interest and dividends are treated as trade profits if the profits are otherwise insufficient to use some or all of a carry-forward trade loss. It is based on section 393(8) of ICTA.
193. It is only interest and dividends that would otherwise be treated as receipts of the trade that can attract this treatment.

Section 47: Registered industrial and provident societies

194. This section extends the scope of section 45 for registered industrial and provident societies. It is based on ESCC5.
195. The classes of income to which the section applies differ slightly from those in the concession. See *Change 7* in Annex 1.

Section 48: Farming or market gardening

196. This section restricts, in certain cases, loss relief in respect of losses arising from a trade of farming or market gardening. It is based on section 397(2) to (8) of ICTA.
197. It is the first of a group of sections (sections 48 to 51) which deal with the potential restriction of losses where the losses arise in respect of a trade of farming or market gardening. It establishes the basic rule. None of these sections applies to trades other than farming or market gardening.
198. *Subsection (2)* sets out the circumstances in which loss relief is restricted. Broadly, this happens once losses have arisen for six successive years.
199. *Subsection (3)* sets out the exceptions to the restriction. *Subsection (3)(b)* provides that if the trade meets the “reasonable expectation of profit” test then the loss restriction does not apply.
200. Definitions of the terms “farming” and “market gardening” are to be found in section 1125.

Section 49: Reasonable expectation of profit

201. This section sets out the “reasonable expectation of profit” test which, if met, enables relief to be given that would otherwise be restricted under section 48. It is based on section 397(3) and (5) of ICTA.

202. “Profit” in section 49 refers to profit in its ordinary commercial sense.

Section 50: Cessation of trades

203. This section sets out the circumstances under which a trade is treated as having ceased. This is necessary in order to determine the length of the period during which losses have arisen in that trade for the purposes of section 48. It is based on section 397(8), (9) and (10) of ICTA.
204. *Subsection (4)* sets out the rules for determining whether certain individuals or companies are to be treated as the same person for the purposes of determining if *subsection (1)* applies.

Section 51: Companies treated as same person as individual

205. This section explains how to calculate losses for the purposes of section 48 where a trade has been transferred from an individual to a company but that individual and that company are treated as the same person by virtue of section 50. It is based on section 397(10) of ICTA.
206. *Subsection (4)* adapts rules in section 70 of ITA and section 203 of ITTOIA to deal with cases where profits or losses have not actually been calculated by reference to tax years. In such cases, the calculation of profits or losses for tax years is an arithmetical exercise, involving apportioning (on a time basis) the profits or losses of periods falling partly within the tax year, and combining these with the profits or losses of any periods falling completely within the tax year.

Section 52: Dealings in commodity futures

207. This section denies relief where losses have been made in a trade of dealing in commodity futures and certain other conditions are met. It is an anti-avoidance provision. It is based on section 399(2), (3) and (5) of ICTA.
208. *Subsection (5)* refers to a “recognised futures exchange” as defined in section 288(6) of TCGA. That subsection is reproduced here to avoid the need to cross-refer to that Act.
- “(6) In this Act “recognised futures exchange” means the London International Financial Futures Exchange and any other futures exchange which is for the time being designated for the purposes of this Act by order made by the Board.

Section 53: Leasing contracts and company reconstructions

209. This section restricts relief in respect of certain leasing arrangements. It is anti-avoidance legislation. It is based on section 395 of ICTA.

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

210. This section prohibits the deduction of losses under section 37 or 45 or under section 436A of ICTA to the extent that such losses arise to a non-UK resident company as a result of excluding certain kinds of tax exempt income from the company’s profits. It is based on section 808 of ICTA.
211. The source legislation was in Part 18 of ICTA (double taxation relief). The rewritten section is with other sections which restrict or otherwise affect the use of losses.
212. A non-UK resident company may utilise any losses that arise under section 37 or 45 provided that those losses are calculated on the basis that receipts of tax-exempt interest, dividends or royalties are included in the company’s profits.

Chapter 3: Limited partners and members of limited liability partnerships

Section 55: Introduction to Chapter

213. This section provides an overview of the Chapter. It is new.
214. The Chapter applies to companies that are either limited partners or member of limited liability partnerships. It limits the amount of relief that may be given under section 37 (other than against profits of the trade) or in respect of group relief. Carry-forward losses under section 45 are not affected.
215. Broadly, relief given must not exceed the amount that the company stands to lose commercially.
216. The source legislation expressed the amount that a partner stands to lose commercially by reference to the partner's contribution to the *trade* that a partnership carries on (the "contribution to the trade"). But, in such cases, the amount that a partner stands to lose commercially is more likely to be reflected in the partner's contribution to the *partnership* that carries on the trade.
217. So this Chapter makes a change by expressing the amount that a partner stands to lose commercially in terms of the partner's contribution to the partnership (the "contribution to the firm"). The change to "contribution to the firm" requires that the possibility of there being partnerships with more than one trade is addressed; and, for consistency with other partnerships, the possibility of a limited liability partnership carrying on more than one trade is also addressed.
218. This change also makes a number of clarifications as to what is included in a partner's contribution. See *Change 8* in Annex 1.

Section 56: Restriction on reliefs for limited partners

219. This section restricts certain reliefs available to a company that is a limited partner to the amount of the company's contribution to the firm. It is based on section 118 of ICTA.
220. *Subsection (3)* refers to a "contribution to the firm" whereas the source legislation refers to a "contribution to the trade". See *Change 8* in Annex 1.
221. *Subsection (6)* sets out how to apply *subsection (4)* and so limit relief if the firm is carrying on more than one trade. See *Change 8* in Annex 1.

Section 57: Meaning of "contribution to the firm"

222. This section defines "contribution to the firm" for the purposes of section 56. It is based on section 118(3) of ICTA.
223. The subsections set out the steps necessary to calculate the "contribution to the firm". The source legislation refers to a "contribution to the trade". This change and some points of clarification are covered in the change note. See *Change 8* in Annex 1.
224. *Subsection (5)* explains how amounts that have been drawn out or received back by the company but have been taxed as profits of a trade are to be excluded from the calculation. See *Change 9* in Annex 1.

Section 58: Meaning of "limited partner"

225. This section defines "limited partner" for the purposes of sections 56 and 57. It is based on section 118(2) of ICTA.
226. A limited partner of a limited partnership registered under the Limited Partnership Act 1907 is someone who is not entitled to take part in the management of the firm's business and is not liable for the debts or obligations of the firm beyond a certain limit.

A limited partner of any other firm is someone who is similarly not entitled to take part in management and not liable for debts or obligations in accordance with the rules applying to the firm in question.

227. *Subsection (4)* is introduced as part of drafting in terms of a company's "contribution to the firm" in place of "contribution to the trade". See *Change 8* in Annex 1.

Section 59: Restriction on relief for members of LLPs

228. This section restricts certain reliefs available to a company that is a member of a limited liability partnership (LLP) to the amount of the company's contribution to the LLP. It is based on sections 118 and 118ZB of ICTA.
229. *Subsection (6)* sets out how to apply *subsection (4)* and so limit relief if the firm is carrying on more than one trade. See *Change 8* in Annex 1.

Section 60: Meaning of "contribution to the LLP"

230. This section defines "contribution to the LLP" for the purposes of section 59. It is based on sections 118ZB and 118ZC of ICTA.
231. An LLP formed under the Limited Liability Partnership Act 2000 is an entity with separate legal personality. That Act defines what is meant by contribution to a limited liability partnership.
232. *Subsection (3)* makes explicit the fact that capitalised undrawn profits are to be included in a company's contribution. See *Change 8* in Annex 1.
233. *Subsection (6)* explains how amounts that have been drawn out or received back by the company but have been taxed as profits of a trade are to be excluded from the calculation. See *Change 9* in Annex 1.

Section 61: Unrelieved losses brought forward

234. This section provides that relief may be given in a later accounting period for losses restricted in accordance with section 59, if certain conditions are met. It is based on section 118ZD of ICTA.

Chapter 4: Property losses

Overview

235. This Chapter deals with property business losses both from UK property businesses and from overseas property businesses.

Section 62: Relief for losses made in UK property business

236. This section provides relief for losses arising from a UK property business. It is based on sections 6(4), 392A and 834(2) of ICTA.
237. "UK property business" is defined in section 205 of CTA 2009. This definition is reproduced here in order to avoid the need to cross-refer:
- "A company's UK property business consists of—
- (a) every business which the company carries on for generating income from land in the United Kingdom, and
 - (b) every transaction which the company enters into for that purpose otherwise than in the course of such a business.
238. *Subsections (4) and (5)* provide that any unused losses are to be carried forward and treated as UK property business losses of later periods. In other words such unused losses may be set against total profits of later periods.

*These notes refer to the Corporation Tax Act 2010
(c.4) which received Royal Assent on 3 March 2010*

239. *Subsection (6)* provides that relief is subject to restriction or modification in accordance with provisions of the Corporation Tax Acts. Examples of such restrictions or modifications are to be found in:
- Sections 56 (restriction on relief for limited partners), 57 (meaning of “contribution to the firm”) and 58 (meaning of “limited partner”);
 - Chapter 7 of this Part (write off of government investment in a company).

Section 63: Company with investment business ceasing to carry on UK property business

240. This section provides a relaxation of the loss carry-forward rules where a company ceases to carry on a UK property business but continues to carry on an investment business. It is based on section 392A(3) of ICTA.
241. A company with investment business is defined in section 1218 of CTA 2009. This definition is reproduced here to avoid the need to cross-refer:
- ““company with investment business” means a company whose business consists wholly or partly of making investments.
242. *Subsection (3)* refers to an unrelieved UK property business loss being carried forward to periods beyond the accounting period subsequent to that in which the UK property business ceased. Once the loss has been carried forward to the accounting period following the cessation period it loses its character as an unrelieved loss and becomes an expense of management. Hence there is no difficulty in carrying the amount forward to later accounting periods providing the investment business continues.

Section 64: UK property business to be commercial or carried on for statutory functions

243. This section provides that sections 62 and 63 only apply when a UK property business is carried on on a commercial basis or in the exercise of functions conferred by or under an Act. It is based on section 392A(5) to (7) of ICTA.
244. The reference to an Act in *subsection (1)* includes an Act of the Scottish Parliament. See *Change 6* in Annex 1.
245. The reference to “profit” in *subsection (2)* is to profit in its ordinary commercial sense.

Section 65: UK furnished holiday lettings business treated as trade

246. This section provides that a UK furnished holiday lettings (UKFHL) business is treated as a trade for loss relief purposes. It is based on section 503 of ICTA.
247. If a company carries on a UKFHL business and is a member of a partnership that also carries on a UKFHL business then the two businesses must be accounted for separately as section 1270(2) of CTA 2009 provides that the firm’s UK property business cannot include business or transactions undertaken by the firm’s individual partners.

Section 66: Relief for losses made in overseas property business

248. This section sets out the rules for relieving losses made in an overseas property business. It is based on section 392B of ICTA.
249. “Overseas property business” is defined in section 206 of CTA 2009. This definition is reproduced in order to avoid the need to cross-refer:
- “(a) every business which the company carries on for generating income from land outside the United Kingdom, and
 - (b) every transaction which the company enters into for that purpose otherwise than in the course of such a business.

*These notes refer to the Corporation Tax Act 2010
(c.4) which received Royal Assent on 3 March 2010*

250. *Subsection (3)* provides that a loss from an overseas property business may be carried forward and set against future profits of that business. Such profits do not include chargeable gains.
251. *Subsection (6)* provides that relief is subject to restriction or modification in accordance with provisions of the Corporation Tax Acts. Examples of such restrictions or modifications are to be found in:
- Section 60 (meaning of “contribution to the LLP”); and
 - Chapter 7 of this Part (write off of government investment in a company).

Section 67: Overseas property business to be commercial or carried on for statutory functions

252. This section provides that section 66 only applies when an overseas property business is carried on on a commercial basis or in the exercise of functions conferred by or under an Act. It is based on sections 392A(5) to (7) and 392B(2) of ICTA.
253. The reference to an Act in *subsection (1)* includes an Act of the Scottish Parliament. See *Change 6* in Annex 1.
254. Subsection (1) also refers to functions conferred by the law of a territory outside the United Kingdom. See *Change 10* in Annex 1.
255. The reference to “profit” in *subsection (2)* is to profit in its ordinary commercial sense.

Chapter 5: Losses on disposal of shares

Overview

256. This Chapter provides that, if an investment company incurs an allowable loss for the purposes of corporation tax on chargeable gains on the disposal of ordinary shares in a qualifying trading company for which it has subscribed, it may claim to set off the loss against its income for corporation tax purposes. It is based on Chapter 5A of Part 13 of ICTA.

Section 68: Share loss relief

257. This section introduces share loss relief. It is based on sections 573(1) and 575(1) and (3) of ICTA.
258. *Subsection (1)* outlines the basic structure of the relief, namely that a company (“the investor company”) is eligible for share loss relief if the following conditions are met:
- the investor company has “subscribed for” shares in another company (“the investee company”) (see the commentary on section 73),
 - the investee company is a “qualifying trading company” (see the commentary on section 78),
 - the investor company incurs an allowable loss for the purposes of corporation tax on chargeable gains on the disposal, and
 - the investor company meets the eligibility conditions (see the commentary on section 69).
259. *Subsection (2)* provides that relief is only available if the disposal is of one of the kinds specified in paragraphs (a) to (d).
260. Subsection (2)(a) is based on section 575(1)(a) of ICTA which specifies as one of the kinds of disposal:

“a disposal by way of a bargain made at arm’s length for full consideration.

261. The words “for full consideration” have been omitted from subsection (2)(a) on the basis that they add nothing. See *Change 11* in Annex 1.

Section 69: Eligibility conditions

262. This section sets out the conditions in relation to the investor company which must be met in order for the investor company to be eligible for share loss relief. It is based on section 573(1) and (5) of ICTA.
263. This section provides that the investor company must be an investment company (as defined in section 90) on the date of the disposal and for a continuous period ending on that date and must not be associated with the investee company or any member of its group.

Section 70: Entitlement to claim

264. This section deals with the making of a claim for share loss relief. It is based on section 573(2) and (3) of ICTA.
265. Share loss relief is obtained by way of a deduction in calculating the investor company’s income for corporation tax purposes.
266. *Subsection (3)* makes clear that the words “if the company was then an investment company” in section 573(2)(b) of ICTA require that the company is an investment company throughout the relevant accounting period.

Section 71: How relief works

267. This section explains how the loss is to be deducted from income. It is based on section 573(2), (3) and (4A) of ICTA.
268. Section 573(4) of ICTA provides that share loss relief must be claimed before any deduction for “charges on income, expenses of management or other amounts which can be deducted from or set against or treated as reducing profits of any description”. It has not been rewritten in this Chapter, but instead the order of priority is achieved in CTA 2009 and this Act in the following way.
269. Because share loss relief operates against the company’s income (see *subsection (1)*), it falls to be deducted at Step 1 in section 4(3), i.e. on the way to finding the amount of the company’s total profits. Charges on income, rewritten as charitable donations relief in Part 6, and expenses of management are to be deducted from the company’s total profits at Step 2 in section 4(2). See section 189(1) of this Act and section 1219(1) of CTA 2009 (as amended by Schedule 1 to this Act). For another example of a deduction from total profits, see section 37(3) (relief for trade losses against total profits).
270. This section provides that the amount not deducted from income of the accounting period in which the loss is incurred may be deducted from the income of earlier accounting periods ending within the immediately preceding period of 12 months (see Step 2 in *subsection (1)*). The extent to which a deduction may be made at Step 2 from an accounting period which falls only partly within that period of 12 months is limited in accordance with section 72.
271. *Subsection (6)* is new. It has been included to make explicit that the balance of any allowable loss for which share loss relief is not obtained continues to be capable of being claimed as a deduction under TCGA.

Section 72: Limit on deduction if accounting period falls partly within 12 month period

272. This section applies where an accounting period ends within 12 months before the accounting period in which the loss is incurred but begins before the beginning of that 12 month period. It is based on section 573(3) of ICTA.
273. This section ensures that a deduction can only be made at Step 2 in section 71(1) from that part of the income of the accounting period that is proportionate to the part of the accounting period falling within the 12 month period.

Section 73: Subscription for shares

274. This section sets out the requirements relating to the subscription for shares in a qualifying trading company. It is based on sections 573(6) and 576K(3) of ICTA and includes a new provision relating to bonus shares.
275. *Subsection (2)* provides that shares are subscribed for by the investor company if they have been issued to the investor company in consideration of money or money's worth.
276. The shares must form part of the ordinary share capital of the investee company. See the definition of "shares" in section 90 and the commentary on that section.
277. *Subsection (3)* is new and treats "corresponding bonus shares" issued in respect of shares which have been subscribed for as themselves having been subscribed for. See *Change 12* in Annex 1.
278. *Subsection (4)* is new and provides that corresponding bonus shares are treated as subscribed for at the same time as the original shares were subscribed for. See *Change 12* in Annex 1.

Section 74: Disposals of new shares

279. This section denies or restricts share loss relief on the disposal of shares which are identified by virtue of section 127 of TCGA with other shares previously held by the investor company, unless certain conditions are met. It is based on section 575(2) and (4) of ICTA.
280. The reference to section 87(3) at the end of *subsection (2)* makes clear that this section does not apply to an exchange of shares to which section 87(1) applies. See the commentary on section 87 and *Change 19* in Annex 1.

Section 75: Limits on relief

281. This section deals with the calculation of the amount of share loss relief. It is based on section 576(1) of ICTA.
282. Section 576(1) of ICTA provides that, if the investor company disposes of shares for which it has subscribed and which form part of a holding, the share loss relief in relation to those shares is not to exceed the sums which would have been allowable as deductions in computing the allowable loss for the purposes of corporation tax on chargeable gains if the shares had not formed part of the holding.
283. Section 75 refines the circumstances in which the provision applies in connection with the changes in section 76 described in *Change 16* in Annex 1. See *Change 13* in Annex 1.
284. *Subsection (8)* explains what is meant by shares "that are not capable of being qualifying shares" for the purposes not only of this section but also of section 76. *Change 14* in Annex 1 contains a detailed explanation of why a mixed holding is defined for the purposes of section 76 in terms of a holding which includes such shares.

285. *Subsection (9)* extends this meaning for the purposes only of *subsection (5)* to cover reorganisations involving the issue of shares of a different class.

Section 76: Disposal of shares forming part of mixed holding

286. This section deals with the identification of shares disposed of where those shares form part of a “mixed holding”. It is based on section 576 of ICTA, with a number of changes.
287. Section 576 of ICTA is concerned with a holding which comprises shares for which a person has subscribed and shares which the person has acquired otherwise than by subscription.
288. *Subsection (1)* provides that this section applies to a holding in which some only of the shares are shares “that are not capable of being qualifying shares” (as defined in section 75(8)). See *Change 14* in Annex 1 which contains a detailed explanation of why a mixed holding has been defined in terms of a holding which includes such shares.
289. *Subsection (2)* provides that the section applies for the purpose of determining the questions:
- whether the shares disposed of are qualifying shares (as defined in section 75); and
 - which of any qualifying shares acquired at different times are disposed of.
290. This is a change from section 576(1) of ICTA, which is not expressed to apply for the purpose of determining which of any qualifying shares are disposed of. See *Change 15* in Annex 1.
291. *Subsection (3)* introduces the rules for determining the questions in subsection (2), including in *subsection (4)* the application of the identification rules in sections 105 and 107 of TCGA. See *Change 16* in Annex 1.
292. *Subsection (7)* is new and puts on a statutory basis the practice under which questions which cannot be determined by the specific provisions of this section are to be determined on a just and reasonable basis. This subsection is principally required in cases where qualifying shares and shares which are not qualifying shares were acquired, or are treated as having been acquired, on the same day. See *Change 16* in Annex 1.
293. *Subsection (8)* (defining “holding”) omits section 576(1D)(b) of ICTA, which applies subsection (4) of section 104 of TCGA. That subsection can apply only to employees and is, therefore, otiose in relation to an investment company.

Section 77: Section 76: supplementary

294. This section supplements section 76. It is new.
295. *Subsection (1)* determines the time of acquisition for the purposes of section 76 of shares issued in a reorganisation within the meaning of section 126 of TCGA to which section 127 of that Act applies. See *Change 17* in Annex 1.
296. *Subsection (2)* clarifies that shares held or disposed of by a nominee or bare trustee for a company are part of the company’s holding for the purposes of section 76. See *Change 18* in Annex 1.

Section 78: Qualifying trading companies

297. This section defines what is a qualifying trading company and introduces sections 79 to 85, which set out six specific requirements to be met by a company if it is to be a qualifying trading company. It is based on section 576A of ICTA.
298. Four of the requirements are to be met on the date of the disposal or, subject to certain conditions, at a time which is not more than three years before that date (see

*These notes refer to the Corporation Tax Act 2010
(c.4) which received Royal Assent on 3 March 2010*

subsection (2)) and for a continuous period ending on that date or, subject to those conditions, at that time (see subsection (3)).

299. Two of the requirements are to be met only at or around the time of issue of the shares in respect of which the share loss relief is claimed (see *subsection (4)*).

Section 79: The trading requirement

300. This section sets out the first of the four requirements to be met throughout the period mentioned in section 78(3). It is based on section 576B of ICTA.

Section 80: Ceasing to meet trading requirement because of administration etc

301. This section supplements section 79 and deals with the consequences for the trading requirement of administration, receivership or winding up. It is based on section 576C of ICTA.

Section 81: The control and independence requirement

302. This section sets out the second of the four requirements to be met throughout the period mentioned in section 78(3). It is based on section 576D of ICTA.
303. Section 576D(3A) of ICTA, which applies section 839 of ICTA (connected persons) for the purposes of that section, has not been rewritten. Section 839 of ICTA is rewritten in section 1122 for the purposes of the Corporation Tax Acts and section 1176(1) applies that definition generally for the purposes of this Act.

Section 82: The qualifying subsidiaries requirement

304. This section sets out the third of the four requirements to be met throughout the period mentioned in section 78(3). It is based on section 576E of ICTA.

Section 83: The property managing subsidiaries requirement

305. This section sets out the last of the four requirements to be met throughout the period mentioned in section 78(3). It is based on section 576F of ICTA.

Section 84: The gross assets requirement

306. This section sets out the requirement to be met only at the times mentioned in section 78(4)(a). It is based on section 576G of ICTA.

Section 85: The unquoted status requirement

307. This section sets out the requirement to be met only at the time mentioned in section 78(4)(b). It is based on section 576H of ICTA.

Section 86: Power to amend requirements by Treasury order

308. This section enables the requirements in sections 79 to 85 to be amended by secondary legislation. It is based on section 576I of ICTA.

Section 87: Relief after an exchange of shares for shares in another company

309. This section and section 88 provide for continuity of the application of the requirements in sections 79 to 85 in the case of certain reconstructions which result in the issue of shares in a new company in exchange for shares in another company but do not involve any change in ownership of the underlying business. This section is based on section 576J of ICTA.
310. *Subsection (3)(a)* is new and resolves the apparent conflict between section 74 and this section. See *Change 19* in Annex 1.

Section 88: Substitution of new shares for old shares

311. This section sets out the consequences for the application of the requirements in sections 79 to 85 of an exchange to which section 87 applies. It is based on section 576K of ICTA.
312. The words “in relation to any subsequent disposal or other event” in section 304A(4) of ICTA on which section 576K(2) of ICTA is based were inadvertently omitted from section 576K(2) by ITA. They have been included in *subsection (2)* in conformity with section 146(2) of ITA, also based on section 304A(4) of ICTA.

Section 89: Deemed time of issue for certain shares

313. This section determines the time of issue of corresponding bonus shares for the purposes of the provisions listed in *subsection (1)*. It is new.
314. *Subsection (2)* mirrors section 73(4). See *Change 20* in Annex 1.

Section 90: Interpretation of Chapter

315. This section explains the meaning of expressions used in this Chapter. It is based on sections 130 and 576L of ICTA.
316. *Subsection (1)* includes the definition of “corresponding bonus shares”. *Subsection (2)* amplifies that definition. See *Change 12* in Annex 1.
317. The definition of “investment company” is set out in full in *subsection (1)* rather than by cross-referring to and modifying the definition in section 130 of ICTA. References to savings banks and banks for savings have been omitted. See *Change 21* in Annex 1.
318. *Subsection (7)* is new and clarifies that the date of disposal is the time when the disposal is made or treated as made for the purposes of corporation tax on chargeable gains. See *Change 22* in Annex 1.

Chapter 6: Losses from miscellaneous transactions

Overview

319. This Chapter deals with loss relief in respect of miscellaneous transactions.

Section 91: Relief for losses from miscellaneous transactions

320. This section provides relief for losses arising from transactions that, had they resulted in gains, would have been treated as miscellaneous income. It is based on section 396 of ICTA.
321. *Subsections (4), (5) and (6)* ensure that such losses may only be relieved against miscellaneous income.

Chapter 7: Write-off of government investment

Overview

322. This Chapter restricts losses where there has been a write-off of an amount of government investment in a company.

Section 92: Loss relief to be reduced if government investment is written off

323. This section provides that if an amount of government investment in a company is written off that company’s carry-forward losses are restricted by the amount written off. It is based on section 400(1) and (10) of ICTA.

Section 93: Groups of companies

324. This section sets out the further rules that apply if section 92 applies and the company is a member of a group of companies. It is based on section 400(5) and (10) of ICTA.
325. In these circumstances *subsection (2)* provides that the restriction may be to the carry-forward losses of any of the group companies provided that the restriction is on a just and reasonable basis. For example, if the government investment had been in a holding company and that company had lent the money to a subsidiary then it would be appropriate to restrict the carry-forward losses of the subsidiary.

Section 94: Cases in which government investment is written off

326. This section sets out the three circumstances which constitute a write-off of government investment. It is based on section 400(7), (8), (9) and (10) of ICTA.

Section 95: Meaning of “carry-forward losses”

327. This section defines the five types of “carry-forward losses”. It is based on section 400(2) to (4) of ICTA.
328. *Subsection (2)* provides that certain amounts are not to be included in the calculation of “carry-forward losses”. The effect of this is to limit the reduction of loss relief provided for by section 92.
329. *Subsection (4)* sets out the order in which losses are to be set off against the various “carry-forward losses” set out at subsection (1).

Section 96: Interaction with other tax provisions

330. This section ensures that a company is not prevented from deducting an amount in calculating its profits of a trade simply because an amount of government investment in the company has been written off. It is based on section 400(6) and (9A) of ICTA.