



Corporation Tax Act 2010

2010 CHAPTER 4

PART 4

LOSS RELIEF

CHAPTER 1

INTRODUCTION

35 Overview of Part

- (1) This Part provides corporation tax relief for—
 - (a) losses made in a trade (see Chapter 2 as well as the restrictions on relief in Chapter 3 relating to limited partnerships and limited liability partnerships),
 - (b) losses made in a UK property business or overseas property business (see Chapter 4),
 - (c) losses made on a disposal of certain shares (see Chapter 5), and
 - (d) losses made in certain miscellaneous transactions (see Chapter 6).
- (2) This Part also provides for the reduction of available relief if there is a write-off of government investment in a company (see Chapter 7).
- (3) For rules about the calculation of losses for the purposes of this Part, see—
 - (a) section 47 of CTA 2009 (losses of a trade calculated on same basis as profits), and
 - (b) section 210 of CTA 2009 (which applies section 47 of that Act, so that losses of a UK property business or overseas property business are calculated on the same basis as profits).
- (4) See also Part 17 of CTA 2009 for rules about how to calculate the losses of a company that is a partner in a partnership.

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.

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.

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.

Status: This is the original version (as it was originally enacted).

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 for which an allowance under section 164 of CAA 2001 is made to the company, 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 the allowance mentioned in subsection (1)(b), subsection (2) applies in relation to the loss only so far as it does not exceed that allowance.
- (4) This section is subject to section 41.

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.

Status: This is the original version (as it was originally enacted).

- (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.

Status: This is the original version (as it was originally enacted).

- (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.

Status: This is the original version (as it was originally enacted).

- (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 any of these provisions—
 - (a) section 37,
 - (b) section 45, or
 - (c) section 436A of ICTA.
- (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.

CHAPTER 3

LIMITED PARTNERS AND MEMBERS OF LIMITED LIABILITY PARTNERSHIPS

Introduction

55 Introduction to Chapter

- (1) This Chapter restricts the amount of relief that may be given for any loss made by a company in a trade carried on by the company—
 - (a) as a limited partner (see sections 56 to 58), or
 - (b) as a member of a limited liability partnership (an “LLP”) (see sections 59 to 61).
- (2) In this Chapter persons carrying on a trade in partnership are referred to collectively as a “firm”.

Limited partners

56 Restriction on reliefs for limited partners

- (1) This section applies if—
 - (a) at any time in an accounting period a company carries on a trade (“the limited partnership trade”) as a limited partner in a firm, and
 - (b) the company makes a loss in the limited partnership trade in that period (“the loss-making period”).
- (2) There is a restriction on the amount of relief that may be given for the loss—
 - (a) under section 37 (relief for trade losses against total profits) other than against profits of the limited partnership trade, or
 - (b) under Part 5 (group relief).
- (3) The restriction is that the sum of—
 - (a) the amount of the relief given, and
 - (b) the total amount of all other relief within subsection (4),

must not exceed the company's contribution to the firm as at the time mentioned in subsection (5).

- (4) Relief is within this subsection if it is given under section 37 or Part 5 for a loss made in the limited partnership trade by the company in an accounting period at any time during which it carries on that trade as a limited partner.
- (5) The time referred to in subsection (3) is—
 - (a) the end of the loss-making period, or
 - (b) if the company ceases to carry on the limited partnership trade during that period, the time when it does so.
- (6) If the firm is carrying on, or has carried on, other trades apart from the limited partnership trade, for the purpose of determining the total amount of all other relief within subsection (4), apply that subsection in relation to each other trade as well as the limited partnership trade and then add the results together.

57 Meaning of “contribution to the firm”

- (1) For the purposes of section 56 the company's contribution to the firm is the sum of amounts A and B.
- (2) Amount A is the amount which the company has contributed to the firm as capital less so much of that amount (if any) as is within subsection (4).
- (3) In particular, the company's share of any profits of the firm is to be included in the amount which the company has contributed to the firm as capital so far as that share has been added to the firm's capital.
- (4) An amount of capital is within this subsection if it is an amount which the company—
 - (a) has previously drawn out or received back,
 - (b) is or may be entitled to draw out or receive back at any time when the company is carrying on a trade as a limited partner in the firm, or
 - (c) is or may be entitled to require another person to reimburse to it.
- (5) In subsection (4) any reference to drawing out or receiving back an amount is to doing so directly or indirectly but does not include drawing out or receiving back an amount which, because of its being drawn out or received back, is chargeable to tax as profits of a trade.
- (6) Amount B is the amount of the company's total share of profits within subsection (7) except so far as—
 - (a) that share has been added to the firm's capital, or
 - (b) the company has received that share in money or money's worth.
- (7) Profits are within this subsection if they are from the limited partnership trade.
- (8) In determining the amount of the company's total share of profits within subsection (7) ignore the company's share of any losses from the limited partnership trade which would (apart from this subsection) reduce that amount.
- (9) In subsections (3), (7) and (8) any reference to profits or losses are to profits or losses calculated in accordance with generally accepted accounting practice (before any adjustment required or authorised by law in calculating profits or losses for tax purposes).

- (10) If the firm is carrying on, or has carried on, other trades apart from the limited partnership trade, subsections (7) and (8) have effect as if references to the limited partnership trade were references to the limited partnership trade or any of the other trades.

58 Meaning of “limited partner”

- (1) In sections 56 and 57 “limited partner” means a company which carries on a trade—
- (a) as a limited partner in a limited partnership registered under the Limited Partnerships Act 1907,
 - (b) as a partner in a firm which in substance acts as a limited partner in relation to the trade (see subsection (2)), or
 - (c) while the condition mentioned in subsection (3) is met in relation to the company.
- (2) A company in substance acts as a limited partner in relation to a trade if the company—
- (a) is not entitled to take part in the management of the trade, and
 - (b) is entitled to have any liabilities (or those beyond a certain limit) for debts or obligations incurred for the purposes of the trade met or reimbursed by some other person.
- (3) The condition referred to in subsection (1)(c) is that—
- (a) the company carries on the trade jointly with other persons,
 - (b) under the law of a territory outside the United Kingdom, the company is not entitled to take part in the management of the trade, and
 - (c) under that law, the company is not liable beyond a certain limit for debts or obligations incurred for the purposes of the trade.
- (4) In the case of a company which is a limited partner as a result of subsection (1)(c), references in sections 56 and 57 to the firm are to be read as references to the relationship between the company and the other persons mentioned in subsection (3)(a).

Members of LLPs

59 Restriction on relief for members of LLPs

- (1) This section applies if—
- (a) a company carries on a trade (“the LLP trade”) as a member of an LLP at any time in an accounting period, and
 - (b) the company makes a loss in the LLP trade in that period (“the loss-making period”).
- (2) There is a restriction on the amount of relief that may be given for the loss—
- (a) under section 37 (relief for trade losses against total profits) other than against profits of the LLP trade, or
 - (b) under Part 5 (group relief).
- (3) The restriction is that the sum of—
- (a) the amount of the relief given, and
 - (b) the total amount of all other relief within subsection (4),

must not exceed the company's contribution to the LLP as at the time mentioned in subsection (5).

- (4) Relief is within this subsection if it is given under section 37 or Part 5 for a loss made in the LLP trade by the company in an accounting period at any time during which it carries on that trade as a member of an LLP.
- (5) The time mentioned in subsection (3) is—
 - (a) the end of the loss-making period, or
 - (b) if the company ceases to carry on the LLP trade during that period, at the time when it does so.
- (6) If the LLP is carrying on, or has carried on, other trades apart from the LLP trade, for the purpose of determining the total amount of all other relief within subsection (4), apply that subsection in relation to each other trade as well as the LLP trade and then add the results together.

60 Meaning of “contribution to the LLP”

- (1) For the purposes of section 59 the company's contribution to the LLP at any time (“the relevant time”) is the sum of amounts A and B.
- (2) Amount A is the amount which the company has contributed to the LLP as capital less so much of that amount (if any) as is within subsection (5).
- (3) In particular, the company's share of any profits of the LLP is to be included in the amount which the company has contributed to the LLP as capital so far as that share has been added to the LLP's capital.
- (4) In subsection (3) the reference to profits is to profits calculated in accordance with generally accepted accounting practice (before any adjustment required or authorised by law in calculating profits for tax purposes).
- (5) An amount of capital is within this subsection if it is an amount which the company—
 - (a) has previously drawn out or received back,
 - (b) draws out or receives back during the period of 5 years beginning with the relevant time,
 - (c) is or may be entitled to draw out or receive back at any time when it is a member of the LLP, or
 - (d) is or may be entitled to require another person to reimburse to it.
- (6) In subsection (5) any reference to drawing out or receiving back an amount is to doing so directly or indirectly but does not include drawing out or receiving back an amount which, because of its being drawn out or received back, is chargeable to tax as profits of a trade.
- (7) Amount B is the amount of the company's liability on a winding up of the LLP so far as that amount is not included in amount A.
- (8) For the purposes of subsection (7) the amount of the company's liability on a winding up of the LLP is the amount which—
 - (a) the company is liable to contribute to the assets of the LLP in the event of the LLP being wound up, and

- (b) the company remains liable to contribute for the period of at least 5 years beginning with the relevant time (or until the LLP is wound up, if that happens before the end of that period).

61 Unrelieved losses brought forward

- (1) This section applies if—
 - (a) a company (“the member company”) carries on a trade as a member of an LLP at a time during an accounting period (“the current period”), and
 - (b) as a result of section 59, relief under section 37 or Part 5 (group relief) has not been given for an amount of loss made in the trade by the member company as a member of the LLP in a previous accounting period.
- (2) For the purpose of determining the relief under section 37 or Part 5 to be given to any company, the amount of loss is treated as having been made by the member company in the current period so far as it is not excluded by subsection (3) or (4).
- (3) An amount of loss is excluded so far as—
 - (a) under this section the amount has been treated as made by the member company in a previous accounting period, and
 - (b) as a result of that, relief under section 37 or Part 5 has been given for the amount or would have been given had a claim been made.
- (4) An amount of loss is also excluded so far as relief under the Corporation Tax Acts has been given for the amount other than as a result of this section.

CHAPTER 4

PROPERTY LOSSES

UK property businesses

62 Relief for losses made in UK property business

- (1) This section applies if, in an accounting period, a company carrying on a UK property business makes a loss in the business.
- (2) Relief for the loss is given to the company under this section.
- (3) The relief is given by deducting the loss from the company’s total profits of the accounting period.
- (4) Subsection (5) applies if—
 - (a) not all the loss can be deducted as mentioned in subsection (3), and
 - (b) the company continues to carry on the UK property business in the next accounting period.
- (5) So far as the loss cannot be deducted, it—
 - (a) is carried forward to the next accounting period, and
 - (b) is treated for the purposes of this section as a loss made by the company in the UK property business in that period.

Status: This is the original version (as it was originally enacted).

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

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

- (1) This section applies if, in an accounting period, a company with investment business (as defined in section 1218 of CTA 2009)—
- (a) ceases to carry on a UK property business or to be within the charge to corporation tax in respect of such a business, but
 - (b) continues to be a company with investment business.
- (2) Subsection (3) applies if, as a result of the company ceasing to carry on the UK property business or to be within the charge to corporation tax in respect of it, an amount of loss made in carrying on that business cannot be carried forward to the next accounting period for the purposes of section 62.
- (3) The amount of loss—
- (a) is, nevertheless, carried forward to the next accounting period, and
 - (b) is treated for the purposes of Chapter 2 of Part 16 of CTA 2009 as an expense of management deductible for that period or a succeeding period in accordance with that Chapter.

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

- (1) Sections 62 and 63 apply to a UK property business only so far as it is carried on—
- (a) on a commercial basis, or
 - (b) in the exercise of functions conferred by or under an Act (including an Act of the Scottish Parliament).
- (2) A business (or part) is not carried on on a commercial basis unless it is carried on with a view to making a profit or so as to afford a reasonable expectation of making a profit.
- (3) If during an accounting period there is a change in the way in which a business (or part) 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.

65 UK furnished holiday lettings business treated as trade

- (1) This section applies if a company carries on a UK furnished holiday lettings business.
- (2) “UK furnished holiday lettings business” means a UK property business so far as it consists of the commercial letting of furnished holiday accommodation (within the meaning of Chapter 6 of Part 4 of CTA 2009).
- (3) For the purposes of this Part the company is treated as carrying on a single trade—
- (a) which consists of every commercial letting of furnished holiday accommodation comprised in the company’s UK furnished holiday lettings business, and
 - (b) in relation to which the profits are chargeable to corporation tax under Chapter 2 of Part 3 of CTA 2009.
- (4) Accordingly, sections 62 to 64 apply in relation to the company’s UK property business as if the lettings mentioned in subsection (3)(a) were not included in it.

- (5) If there is a letting of accommodation only part of which is furnished holiday accommodation, just and reasonable apportionments are to be made for the purpose of determining what is comprised in the trade treated as carried on.

Overseas property businesses

66 Relief for losses made in overseas property business

- (1) This section applies if, in an accounting period, a company carrying on an overseas property business makes a loss in the business.
- (2) Relief for the loss is given to the company under this section.
- (3) For this purpose—
- (a) the loss is carried forward to subsequent accounting periods, and
 - (b) the profits of the business of any such period are reduced by the loss so far as it cannot be used under this paragraph to reduce the profits of the business of an earlier period.
- (4) Relief under this section is subject to restriction or modification in accordance with provisions of the Corporation Tax Acts.

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

- (1) Section 66 applies to an overseas property business only so far as it is carried on—
- (a) on a commercial basis, or
 - (b) in the exercise of functions conferred by or under an Act (including an Act of the Scottish Parliament) or by or under the law of a territory outside the United Kingdom.
- (2) A business (or part) is not carried on on a commercial basis unless it is carried on with a view to making a profit or so as to afford a reasonable expectation of making a profit.
- (3) If during an accounting period there is a change in the way in which a business (or part) 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.

CHAPTER 5

LOSSES ON DISPOSAL OF SHARES

Share loss relief against income

68 Share loss relief

- (1) A company which has subscribed for shares in a qualifying trading company is eligible for relief under this Chapter (“share loss relief”) if—
- (a) it incurs an allowable loss (for the purposes of corporation tax on chargeable gains) on the disposal of the shares in any accounting period, and

Status: This is the original version (as it was originally enacted).

- (b) it meets the eligibility conditions (see section 69).
- (2) Subsection (1) applies only if the disposal of the shares is—
- (a) by way of a bargain made at arm’s length,
 - (b) by way of a distribution in the course of dissolving or winding up the qualifying trading company,
 - (c) a disposal within section 24(1) of TCGA 1992 (entire loss, destruction, dissipation or extinction of asset), or
 - (d) a deemed disposal under section 24(2) of that Act (claim that value of the asset has become negligible).
- (3) Subsection (1) does not apply to any allowable loss incurred on the disposal if—
- (a) the shares are the subject of an exchange or arrangement of the kind mentioned in section 135 or 136 of TCGA 1992 (company reconstructions etc), and
 - (b) because of section 137 of that Act, the exchange or arrangement involves a disposal of the shares.
- (4) For the meaning of “qualifying trading company”, see section 78.

69 Eligibility conditions

- (1) These are the eligibility conditions mentioned in section 68(1)(b) that a company which has subscribed for shares in a qualifying trading company must meet to be eligible for share loss relief on the disposal of the shares.
- (2) Condition A is that the subscribing company (“the investor”) is an investment company on the date of the disposal of the shares (“the disposal date”).
- (3) Condition B is that the investor has been an investment company—
- (a) for a continuous period of 6 years ending on the disposal date, or
 - (b) for a shorter continuous period ending on the disposal date and has not before the beginning of that period been a trading company or an excluded company (see section 90(1)).
- (4) Condition C is that the investor was not associated with, or a member of the same group as, the qualifying trading company at any time during the period—
- (a) beginning with the date when the investor subscribed for the shares, and
 - (b) ending with the disposal date.
- (5) For the purposes of condition C, two companies are associated with each other if—
- (a) one controls the other, or
 - (b) both are under the control of the same person or persons.
- (6) Sections 450 and 451 (which contain provision as to when a person is to be taken to have control of a company) apply for the purposes of subsection (5).

70 Entitlement to claim

- (1) This section applies where a company is eligible for share loss relief.
- (2) The company may make a claim for the loss to be deducted in calculating for corporation tax purposes the company’s income—
- (a) for the accounting period in which the loss is incurred, and

- (b) if the claim so requires, for previous accounting periods so far as they fall (wholly or partly) within the period of 12 months ending immediately before the beginning of the accounting period in which the loss is incurred.
- (3) The company may make a claim under subsection (2)(b) for any accounting period only if the company was an investment company throughout that period.
- (4) A claim for share loss relief must be made before the end of the period of two years after the end of the accounting period in which the loss is incurred.

71 How relief works

- (1) This subsection explains how deductions in respect of share loss relief claimed by a company under section 70 are to be made.

Step 1

Deduct the loss in calculating the company's income for the accounting period in which the loss is incurred.

Step 2

If not all of the loss can be deducted at Step 1, deduct the remaining loss in calculating the company's income for any accounting period falling (wholly or partly) within the 12 month period that ends immediately before the beginning of the accounting period in which the loss is incurred.

- (2) The amount of a deduction to be made at Step 2 for any accounting period is the amount of the loss so far as it cannot be deducted under subsection (1) for a subsequent accounting period.
- (3) Subsection (1) is subject to sections 72, 74(5) and 75 (which set limits on the amount of share loss relief that may be obtained in particular cases).
- (4) A deduction at Step 2 from the income of an accounting period may be made only after all other deductions have been made from the income for that period in respect of share loss relief given for an earlier loss.
- (5) Deductions made on the basis of relief claimed under Part 7 of Schedule 15 to FA 2000 (relief for losses on disposal of shares to which investment relief is attributable) must, in accordance with paragraph 70 of that Schedule, be made before making deductions for share loss relief.
- (6) A claim for share loss relief does not affect any claim for a deduction under TCGA 1992 for so much of the allowable loss as is not deducted under subsection (1).

72 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 ending immediately before the beginning of the accounting period in which the loss is incurred.
- (2) The amount of the deduction under Step 2 in section 71(1) for the accounting period is not to exceed an amount equal to the overlapping proportion of the company's income of that period.

Status: This is the original version (as it was originally enacted).

- (3) The overlapping proportion is the same as the proportion that the part of the accounting period falling within the 12 month period mentioned in subsection (1) bears to the whole of the accounting period.

Shares: subscription and disposal

73 Subscription for shares

- (1) This section has effect for the purposes of this Chapter.
- (2) A company subscribes for shares in another company if they are issued to the company by the other company in consideration of money or money's worth.
- (3) If—
- (a) a company has subscribed for, or is treated under this subsection as having subscribed for, any shares, and
 - (b) any corresponding bonus shares are subsequently issued to the company, the company is treated as having subscribed for the bonus shares.
- (4) If—
- (a) a company subscribed for any shares (“the original shares”) on a particular date, and
 - (b) any corresponding bonus shares are treated as having been subscribed for by the company under subsection (3), the company is treated as having subscribed for the bonus shares on that date.

74 Disposals of new shares

- (1) This section applies if—
- (a) a company disposes of shares (“the new shares”), and
 - (b) the new shares are, by virtue of section 127 of TCGA 1992 (reorganisation etc treated as not involving disposal), identified with other shares (“the old shares”) previously held by the company.
- (2) The company is not eligible for share loss relief on the disposal of the new shares unless condition A or B is met.
- This is subject to section 87(3).
- (3) Condition A is that the company would have been eligible for share loss relief on a disposal of the old shares—
- (a) if the company had incurred an allowable loss in disposing of them by way of a bargain made at arm's length on the occasion of the disposal that would have occurred but for section 127 of TCGA 1992, and
 - (b) where applicable, if this Chapter had then been in force.
- (4) Condition B is that the company gave for the new shares consideration in money or money's worth other than consideration of the kind mentioned in paragraph (a) or (b) of section 128(2) of TCGA 1992 (“new consideration”).

- (5) If the company relies on condition B, the amount of share loss relief on the disposal of the new shares must not exceed the amount or value of the new consideration taken into account as a deduction in calculating the amount of the loss incurred on the disposal.

75 Limits on relief

- (1) Subsection (2) applies if—
- (a) a company disposes of any shares for which it has subscribed in a qualifying trading company (“qualifying shares”),
 - (b) those shares either—
 - (i) form part of a section 104 holding or a 1982 holding at the time of the disposal, or
 - (ii) formed part of such a holding at an earlier time, and
 - (c) the company makes a claim under section 70 in respect of a loss incurred on the disposal.
- (2) The amount of share loss relief on the disposal is not to exceed the sums that would be allowed as deductions in calculating the amount of the loss if the qualifying shares had not formed part of the holding.
- (3) Subsection (4) applies if—
- (a) a company disposes of any qualifying shares,
 - (b) the qualifying shares, and other shares that are not capable of being qualifying shares, are for the purposes of TCGA 1992 to be treated as acquired by a single transaction by virtue of section 105(1)(a) of that Act (disposal of shares acquired on same day etc), and
 - (c) the company makes a claim under section 70 in respect of a loss incurred on the disposal.
- (4) The amount of share loss relief on the disposal is not to exceed the sums that would be allowed as deductions in calculating the amount of the loss if—
- (a) the qualifying shares were to be treated as acquired by a single transaction, and
 - (b) the other shares were not to be so treated.
- (5) Subsection (6) applies if—
- (a) a company (“the investor”) disposes of any qualifying shares,
 - (b) the qualifying shares (taken as a single asset), and other shares in the same company that are not capable of being qualifying shares (taken as a single asset), are for the purposes of TCGA 1992 to be treated as the same asset by virtue of section 127 of that Act (reorganisation etc treated as not involving disposal), and
 - (c) the investor makes a claim under section 70 in respect of a loss incurred on the disposal.
- References in this subsection and subsection (6) to other shares in the same company include debentures of the same company.
- (6) The amount of share loss relief on the disposal is not to exceed the sums that would be allowed as deductions in calculating the amount of the loss if the qualifying shares and the other shares in the same company were not to be treated as the same asset.
- (7) In this section—

Status: This is the original version (as it was originally enacted).

“section 104 holding” has the meaning given by section 104(3) of TCGA 1992, and

“1982 holding” has the meaning given by section 109(1) of that Act.

- (8) For the purposes of this section and section 76, shares are not capable of being qualifying shares at any time if—
- (a) the company concerned acquired the shares otherwise than by subscription,
 - (b) condition C in section 78(4) was not met in relation to the issue of the shares, or
 - (c) condition D in section 78(5) would not be met if the shares were disposed of at that time.
- (9) For the purposes of subsection (5), shares are not capable of being qualifying shares at any time if they are shares of a different class from the shares mentioned in paragraph (a) of that subsection.

76 Disposal of shares forming part of mixed holding

- (1) This section applies if a company disposes of shares forming part of a mixed holding of shares, that is, a holding of shares in a company which includes—
- (a) shares that are not capable of being qualifying shares, and
 - (b) other shares.
- (2) Any question—
- (a) whether a disposal by the company of shares forming part of the mixed holding is of qualifying shares, or
 - (b) as to which of any qualifying shares acquired by the company at different times such a disposal relates to,
- is to be determined as provided by the following provisions of this section.
- (3) Any such question as is mentioned in subsection (2) is to be determined—
- (a) except in a case falling within paragraph (b)—
 - (i) in accordance with subsection (4), and
 - (ii) in the case of shares which under that subsection are identified with the whole or any part of a section 104 holding or a 1982 holding, in accordance with subsection (5),
 - (b) in the case of a mixed holding which includes any shares—
 - (i) to which investment relief is attributable under Schedule 15 to FA 2000 (corporate venturing scheme), and
 - (ii) which have been held continuously (within the meaning of paragraph 97 of that Schedule) from the time they were issued until the disposal, in accordance with subsection (6).
- (4) For the purposes of subsection (3)(a)(i), the question is to be determined by identifying the shares disposed of in accordance with sections 105 and 107 of TCGA 1992.
- (5) For the purposes of subsection (3)(a)(ii), the question is to be determined by treating the disposal and any previous disposal by the company out of the section 104 or 1982 holding as relating to shares acquired later rather than earlier.
- (6) For the purposes of subsection (3)(b), the question is to be determined—

Status: This is the original version (as it was originally enacted).

- (a) as provided by paragraph 93 of Schedule 15 to FA 2000 (identification of shares on a disposal of part of a holding where investment relief is attributable to any shares in the holding held continuously by the disposing company), but
 - (b) as if the references in that paragraph to a disposal had the same meaning as in the preceding provisions of this section.
- (7) Any such question as is mentioned in subsection (2) which cannot be determined as provided by subsections (3) to (6) is to be determined on a just and reasonable basis.
- (8) In this section “holding” means any number of shares of the same class held by one company in the same capacity, growing or diminishing as shares of that class are acquired or disposed of.
- For this purpose shares are not to be treated as being of the same class unless they are so treated by the practice of a recognised stock exchange or would be so treated if dealt in on such an exchange.
- (9) In this section “section 104 holding”, “1982 holding” and “qualifying shares” have the same meaning as in section 75.

77 Section 76: supplementary

- (1) In a case to which section 127 of TCGA 1992 (reorganisation etc treated as not involving disposal) applies (including a case where that section applies by virtue of an enactment relating to chargeable gains), shares included in the new holding are treated for the purposes of section 76 as acquired when the original shares were acquired.
- (2) Any shares held or disposed of by a nominee or bare trustee for a company are treated for the purposes of section 76 as held or disposed of by that company.
- (3) In this section “new holding” and “original shares” have the same meaning as in section 127 of TCGA 1992 (or, as the case may be, that section as applied by the enactment concerned).

Qualifying trading companies: the requirements

78 Qualifying trading companies

- (1) For the purposes of this Chapter a qualifying trading company is a company which meets each of conditions A to D.
- (2) Condition A is that the company either—
 - (a) meets each of the following requirements on the date of the disposal—
 - (i) the trading requirement (see section 79),
 - (ii) the control and independence requirement (see section 81),
 - (iii) the qualifying subsidiaries requirement (see section 82), and
 - (iv) the property managing subsidiaries requirement (see section 83), or
 - (b) has ceased to meet any of those requirements at a time which is not more than 3 years before that date and has not since that time been an excluded company, an investment company or a trading company.
- (3) Condition B is that the company either—

Status: This is the original version (as it was originally enacted).

- (a) has met each of the requirements mentioned in condition A for a continuous period of 6 years ending on that date or at that time, or
 - (b) has met each of those requirements for a shorter continuous period ending on that date or at that time and has not before the beginning of that period been an excluded company, an investment company or a trading company.
- (4) Condition C is that the company—
- (a) met the gross assets requirement (see section 84) both immediately before and immediately after the issue of the shares in respect of which the share loss relief is claimed, and
 - (b) met the unquoted status requirement (see section 85) at the relevant time within the meaning of that section.
- (5) Condition D is that the company has carried on its business wholly or mainly in the United Kingdom throughout the period—
- (a) beginning with the incorporation of the company or, if later, 12 months before the shares in question were issued, and
 - (b) ending with the date of the disposal.

79 The trading requirement

- (1) The trading requirement is that—
- (a) the company, ignoring any incidental purposes, exists wholly for the purpose of carrying on one or more qualifying trades, or
 - (b) the company is a parent company and the business of the group does not consist wholly or as to a substantial part in the carrying on of non-qualifying activities.
- (2) If the company intends that one or more other companies should become its qualifying subsidiaries with a view to their carrying on one or more qualifying trades—
- (a) the company is treated as a parent company for the purposes of subsection (1)(b), and
 - (b) the reference in subsection (1)(b) to the group includes the company and any existing or future company that will be its qualifying subsidiary after the intention in question is carried into effect.

This subsection does not apply at any time after the abandonment of that intention.

- (3) For the purpose of subsection (1)(b) the business of the group means what would be the business of the group if the activities of the group companies taken together were regarded as one business.
- (4) For the purpose of determining the business of a group, activities are ignored so far as they are activities carried on by a mainly trading subsidiary otherwise than for its main purpose.
- (5) For the purposes of determining the business of a group, activities of a group company are ignored so far as they consist in—
- (a) the holding of shares in or securities of a qualifying subsidiary of the parent company,
 - (b) the making of loans to another group company,
 - (c) the holding and managing of property used by a group company for the purpose of one or more qualifying trades carried on by a group company, or

Status: This is the original version (as it was originally enacted).

- (d) the holding and managing of property used by a group company for the purpose of research and development from which it is intended—
- (i) that a qualifying trade to be carried on by a group company will be derived, or
 - (ii) that a qualifying trade carried on or to be carried on by a group company will benefit.
- (6) Any reference in subsection (5)(d)(i) or (ii) to a group company includes a reference to any existing or future company which will be a group company at any future time.
- (7) In this section—
- “excluded activities” has the meaning given by section 192 of ITA 2007 read with sections 193 to 199 of that Act,
 - “group” means a parent company and its qualifying subsidiaries,
 - “group company”, in relation to a group, means the parent company or any of its qualifying subsidiaries,
 - “incidental purposes” means purposes having no significant effect (other than in relation to incidental matters) on the extent of the activities of the company in question,
 - “mainly trading subsidiary” means a subsidiary which, apart from incidental purposes, exists wholly for the purpose of carrying on one or more qualifying trades, and any reference to the main purpose of such a subsidiary is to be read accordingly,
 - “non-qualifying activities” means—
 - (a) excluded activities, and
 - (b) activities (other than research and development) carried on otherwise than in the course of a trade,
 - “parent company” means a company that has one or more qualifying subsidiaries,
 - “qualifying subsidiary” is to be read in accordance with section 191 of ITA 2007,
 - “qualifying trade” has the meaning given by section 189 of that Act, and
 - “research and development” has the meaning given by section 1138 of this Act.
- (8) In sections 189(1)(b) and 194(4)(c) of ITA 2007 (as applied by subsection (7) for the purposes of the definitions of “excluded activities” and “qualifying trade”) “period B” means the continuous period that is relevant for the purposes of section 78(3).
- (9) In section 195 of ITA 2007 (as applied by subsection (7) for the purpose of the definition of “excluded activities”), references to the issuing company are to be read as references to the company mentioned in subsection (1).

80 Ceasing to meet trading requirement because of administration etc

- (1) A company is not regarded as ceasing to meet the trading requirement merely because of anything done in consequence of the company or any of its subsidiaries being in administration or receivership.

This has effect subject to subsections (2) and (3).

- (2) Subsection (1) applies only if—

Status: This is the original version (as it was originally enacted).

- (a) the entry into administration or receivership, and
- (b) everything done as a result of the company concerned being in administration or receivership,

is for genuine commercial reasons, and is not part of a scheme or arrangement the main purpose or one of the main purposes of which is the avoidance of tax.

- (3) A company ceases to meet the trading requirement if before the time that is relevant for the purposes of section 78(2)—
- (a) a resolution is passed, or an order is made, for the winding up of the company or any of its subsidiaries (or, in the case of a winding up otherwise than under the Insolvency Act 1986 or the Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 (N.I. 19)), any other act is done for the like purpose), or
 - (b) the company or any of its subsidiaries is dissolved without winding up.

This is subject to subsection (4).

- (4) Subsection (3) does not apply if—
- (a) the winding up is for genuine commercial reasons, and is not part of a scheme or arrangement the main purpose or one of the main purposes of which is the avoidance of tax, and
 - (b) the company continues, during the winding up, to be a trading company.
- (5) References in this section to a company being “in administration” or “in receivership” are to be read in accordance with section 252 of ITA 2007.

81 The control and independence requirement

- (1) The control element of the requirement is that—
- (a) the company must not control (whether on its own or together with any person connected with it) any company which is not a qualifying subsidiary of the company, and
 - (b) no arrangements must be in existence by virtue of which the company could fail to meet paragraph (a) (whether at a time during the continuous period that is relevant for the purposes of section 78(3) or otherwise).
- (2) The independence element of the requirement is that—
- (a) the company must not—
 - (i) be a 51% subsidiary of another company, or
 - (ii) be under the control of another company (or of another company and any other person connected with that other company), without being a 51% subsidiary of that other company, and
 - (b) no arrangements must be in existence by virtue of which the company could fail to meet paragraph (a) (whether at a time during the continuous period that is relevant for the purposes of section 78(3) or otherwise).
- (3) This section is subject to section 87(3).
- (4) In this section—
- “arrangements” includes any scheme, agreement or understanding (whether or not legally enforceable),
 - “control”, in subsection (1)(a), is to be read in accordance with sections 450 and 451 (but see section 1124 for the meaning of “control” in subsection (2)(a)(ii)), and

“qualifying subsidiary” is to be read in accordance with section 191 of ITA 2007.

82 The qualifying subsidiaries requirement

- (1) The qualifying subsidiaries requirement is that any subsidiary that the company has must be a qualifying subsidiary of the company.
- (2) In this section “qualifying subsidiary” is to be read in accordance with section 191 of ITA 2007.

83 The property managing subsidiaries requirement

- (1) The property managing subsidiaries requirement is that any property managing subsidiary that the company has must be a qualifying 90% subsidiary of the company.
- (2) In this section—
 - “property managing subsidiary” has the meaning given by section 188(2) of ITA 2007, and
 - “qualifying 90% subsidiary” has the meaning given by section 190 of that Act.

84 The gross assets requirement

- (1) The gross assets requirement in the case of a single company is that the value of the company’s gross assets—
 - (a) must not exceed £7 million immediately before the shares in respect of which the share loss relief is claimed are issued, and
 - (b) must not exceed £8 million immediately afterwards.
- (2) The gross assets requirement in the case of a parent company is that the value of the group assets—
 - (a) must not exceed £7 million immediately before the shares in respect of which the share loss relief is claimed are issued, and
 - (b) must not exceed £8 million immediately afterwards.
- (3) The value of the group assets means the sum of the values of the gross assets of each of the members of the group, ignoring any that consist in rights against, or shares in or securities of, another member of the group.
- (4) In this section—
 - “group” means a parent company and its qualifying subsidiaries,
 - “parent company” means a company that has one or more qualifying subsidiaries,
 - “qualifying subsidiary” is to be read in accordance with section 191 of ITA 2007, and
 - “single company” means a company that does not have one or more qualifying subsidiaries.

Status: This is the original version (as it was originally enacted).

85 The unquoted status requirement

- (1) The unquoted status requirement is that, at the time (“the relevant time”) at which the shares in respect of which the share loss relief is claimed are issued—
- (a) the company must be an unquoted company,
 - (b) there must be no arrangements in existence for the company to cease to be an unquoted company, and
 - (c) there must be no arrangements in existence for the company to become a subsidiary of another company (“the new company”) by virtue of an exchange of shares, or shares and securities, if—
 - (i) section 87 applies in relation to the exchange, and
 - (ii) arrangements have been made with a view to the new company ceasing to be an unquoted company.
- (2) The arrangements referred to in subsection (1)(b) and (c)(ii) do not include arrangements in consequence of which any shares, stocks, debentures or other securities of the company or the new company are at any subsequent time—
- (a) listed on a stock exchange that is a recognised stock exchange by virtue of an order made under section 1005(1)(b) of ITA 2007, or
 - (b) listed on an exchange, or dealt in by any means, designated by an order made for the purposes of section 184(3)(b) or (c) of that Act,
- if the order was made after the relevant time.
- (3) In this section—
- “arrangements” includes any scheme, agreement or understanding (whether or not legally enforceable),
- “debenture” has the meaning given by section 738 of the Companies Act 2006, and
- “unquoted company” has the meaning given by section 184(2) of ITA 2007.

86 Power to amend requirements by Treasury order

The Treasury may by order make such amendments of sections 79 to 85 as they consider appropriate.

Qualifying trading companies: supplementary

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

- (1) This section and section 88 apply in relation to shares if—
- (a) a company (“the new company”) in which the only issued shares are subscriber shares acquires all the shares (“old shares”) in another company (“the old company”),
 - (b) the consideration for the old shares consists wholly of the issue of shares (“new shares”) in the new company,
 - (c) the consideration for the new shares of each description consists wholly of old shares of the corresponding description,
 - (d) new shares of each description are issued to the holders of old shares of the corresponding description in respect of and in proportion to their holdings, and

Status: This is the original version (as it was originally enacted).

- (e) by virtue of section 127 of TCGA 1992 as applied by section 135(3) of that Act (company reconstructions etc), the exchange of shares is not to be treated as involving a disposal of the old shares or an acquisition of the new shares.
In this subsection references to shares, except the first and that in the expression “subscriber shares”, include securities.
- (2) For the purposes of this Chapter the exchange of shares is not regarded as involving any disposal of the old shares or any acquisition of the new shares.
- (3) Nothing in—
 - (a) section 74(2) (disposal of new shares), and
 - (b) section 81 (the control and independence requirement),applies in relation to such an exchange of shares, or shares and securities, as is mentioned in subsection (1) or, in the case of section 81, arrangements with a view to such an exchange.
- (4) For the purposes of this section old shares and new shares are of a corresponding description if, on the assumption that they were shares in the same company, they would be of the same class and carry the same rights.
- (5) References in section 88 to “old shares”, “new shares”, “the old company” and “the new company” are to be read in accordance with this section.

88 Substitution of new shares for old shares

- (1) Subsection (2) applies if, in the case of any new shares held by a company or by a nominee for a company, the old shares for which they were exchanged were shares which had been subscribed for by the company (“the investor”).
- (2) This Chapter has effect in relation to any subsequent disposal or other event as if—
 - (a) the new shares had been subscribed for by the investor at the time when, and for the amount for which, the old shares were subscribed for by the investor,
 - (b) the new shares had been issued by the new company at the time when the old shares were issued to the investor by the old company, and
 - (c) any requirements of this Chapter which were met at any time before the exchange by the old company had been met at that time by the new company.
- (3) Nothing in subsection (2) applies in relation to section 195(7) of ITA 2007 as applied by section 79(7) above for the purpose of the definition of “excluded activities”.

89 Deemed time of issue for certain shares

- (1) This section applies for the purposes of the following provisions—
 - section 78(5)(a),
 - section 84(1)(a) and (2)(a),
 - section 85(1), and
 - section 88(2)(b).
- (2) If—
 - (a) any shares (“the original shares”) have been issued to a company, or are treated under this subsection as having been issued to the company at a particular time, and

Status: This is the original version (as it was originally enacted).

(b) any corresponding bonus shares are subsequently issued to the company, the bonus shares are treated as having been issued at the time the original shares were issued to the company or are treated as having been so issued.

Interpretation

90 Interpretation of Chapter

- (1) In this Chapter (subject to subsections (2) to (7))—
- “bonus shares” means shares which are issued otherwise than for payment (whether in cash or otherwise),
- “corresponding bonus shares”, in relation to any shares, means bonus shares which—
- (a) are issued in respect of those shares, and
 - (b) are in the same company, are of the same class, and carry the same rights, as those shares,
- “excluded company” means a company which—
- (a) has a trade which consists wholly or mainly of dealing in land, in commodities or futures or in shares, securities or other financial instruments,
 - (b) has a trade which is not carried on on a commercial basis and in such a way that profits in the trade can reasonably be expected to be realised,
 - (c) is a holding company of a group other than a trading group, or
 - (d) is a building society or a registered industrial and provident society,
- “group” (except in sections 79 and 84) means a company which has one or more 51% subsidiaries together with that or those subsidiaries,
- “holding company” means a company whose business consists wholly or mainly in the holding of shares or securities of companies which are its 51% subsidiaries,
- “investment company” means a company—
- (a) whose business consists wholly or mainly in the making of investments, and
 - (b) which derives the principal part of its income from the making of investments,
- but does not include the holding company of a trading group,
- “registered industrial and provident society” means a society registered or treated as registered under the Industrial and Provident Societies Act 1965 or the [Industrial and Provident Societies Act \(Northern Ireland\) 1969 \(c. 24 \(N.I.\)\)](#),
- “shares”—
- (a) includes stock, but
 - (b) does not include shares or stock not forming part of a company’s ordinary share capital,
- “share loss relief” has the meaning given by section 68(1),
- “trading company” means a company other than an excluded company which is—
- (a) a company whose business consists wholly or mainly in the carrying on of a trade or trades, or

Status: This is the original version (as it was originally enacted).

- (b) the holding company of a trading group, and
“trading group” means a group the business of whose members, when taken together, consists wholly or mainly in the carrying on of a trade or trades.
- (2) For the purposes of the definition of “corresponding bonus shares” in subsection (1), shares are not treated as being of the same class unless they would be so treated if they were—
 - (a) included in the official UK list, and
 - (b) admitted to trading on the London Stock Exchange.
- (3) Except as provided by subsection (4), paragraph (b) of the definition of shares in subsection (1) does not apply in the definition of “excluded company” in subsection (1) or in sections 75(3) to (6), (8) and (9) and 87(1) to (4).
- (4) Paragraph (b) of that definition applies in relation to the first reference to “shares” in section 87(1).
- (5) The definition of “shares” in subsection (1) does not apply in sections 79(5)(a), 84(3) and 85(1)(c) and (2).
- (6) For the purposes of the definition of “trading group” in subsection (1), any trade carried on by a subsidiary which is an excluded company is treated as not constituting a trade.
- (7) For the purposes of this Chapter a disposal of shares which results in an allowable loss for the purposes of corporation tax on chargeable gains is treated as made at the time when the disposal is made or treated as made for the purposes of TCGA 1992.

CHAPTER 6

LOSSES FROM MISCELLANEOUS TRANSACTIONS

91 Relief for losses from miscellaneous transactions

- (1) This section applies if, in an accounting period (“the loss-making period”), a company makes a loss in a transaction within subsection (2).
- (2) A transaction is within this subsection if income arising from it would be miscellaneous income of the company.
- (3) Relief for the loss is given to the company under this section.
- (4) For this purpose the company’s miscellaneous income of the loss-making period is reduced by the loss.
- (5) Subsection (6) applies to the loss so far as it cannot be used under subsection (4) to reduce the company’s income.
- (6) The loss—
 - (a) is carried forward to subsequent accounting periods, and
 - (b) the company’s miscellaneous income of any such period is reduced by the loss so far as it cannot be used under this paragraph to reduce the income of an earlier period.
- (7) A company’s miscellaneous income is so much of the company’s income which—

Status: This is the original version (as it was originally enacted).

- (a) arises from transactions, and
- (b) is chargeable to corporation tax under or by virtue of any provision to which section 1173 applies, other than regulation 18(4) of the Offshore Funds (Tax) Regulations 2009 (S.I. 2009/3001) (offshore income gains).

CHAPTER 7

WRITE-OFF OF GOVERNMENT INVESTMENT

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

- (1) This section applies if an amount of government investment in a company (“the written-off amount”) is written off.
- (2) The written-off amount is set off against the company’s carry-forward losses as at the end of the accounting period ending last before the day of the write-off.
- (3) If the written-off amount exceeds those losses, the excess is set off against the company’s carry-forward losses as at the end of the next accounting period and so on until the whole of the written-off amount has been set off.
- (4) In this Chapter “company” has the meaning given by section 1121 but does not include an unincorporated association.
- (5) This section needs to be read with—
 - section 93 (which applies if the company is in a group of companies),
 - section 94 (which explains what is meant by government investment being written off and how the written-off amount is calculated), and
 - section 95 (which explains what is meant by carry-forward losses).

93 Groups of companies

- (1) This section applies if—
 - (a) at the end of an accounting period a company in which an amount of government investment is written off is in a group of companies, and
 - (b) under section 92(2) or (3) an amount could be set off against the company’s carry-forward losses as at the end of that period (or could be so set off if there were enough of those losses).
- (2) The amount may be set off (wholly or partly) against the carry-forward losses of one or more companies within subsection (3), as may be just and reasonable.
- (3) A company (other than the company referred to in subsection (1)(a)) is within this subsection if at the end of the accounting period it is in the group of companies.
- (4) A “group of companies” consists of a company that has one or more 51% subsidiaries, together with that or those subsidiaries.

94 Cases in which government investment is written off

- (1) Government investment in a company is written off if any of the following occurs in relation to the company.

This is subject to subsection (2).

Case 1

The company's liability to repay any money lent to it out of public funds by a Minister is extinguished.

In this case the written-off amount is the amount of the liability extinguished and the write-off occurs when the liability is extinguished.

Case 2

Any of the company's shares for which a Minister has subscribed out of public funds are cancelled.

In this case the written-off amount is the amount subscribed for the shares and the write-off occurs when the shares are cancelled.

Case 3

The company's commencing capital debt (see subsection (3)) is reduced otherwise than by being paid off or its public dividend capital (see subsection (4)) is reduced otherwise than by being repaid (including, in either case, a reduction to nil).

In this case the written-off amount is the amount of the reduction and the write-off occurs when the reduction occurs.

- (2) The written-off amount is reduced so far as it is replaced by—
- (a) money lent, or a payment made, out of public funds, or
 - (b) shares subscribed for by a Minister for money or money's worth.
- (3) "Commencing capital debt" means a debt to a Minister assumed as such under an enactment.
- (4) "Public dividend capital" means an amount paid by a Minister—
- (a) under an enactment in which that amount is so described, or
 - (b) under an enactment corresponding to an enactment in which a payment made on similar terms to another body is so described.
- (5) In this section—
- "enactment" includes an Act of the Scottish Parliament, and
 - "Minister" means a Minister of the Crown, the Scottish Ministers or a Northern Ireland department.

95 Meaning of "carry-forward losses"

- (1) A company's carry-forward losses as at the end of an accounting period are as follows.

Type 1

Losses of the company to be carried forward under section 45, 62 or 66 to the next accounting period.

These include losses to be treated as expenses of management of the company under section 63 for the next accounting period.

Type 2

Any excess of the company to be carried forward for deduction to the next accounting period under section 1223(3) of CTA 2009.

Type 3

Status: This is the original version (as it was originally enacted).

Any excess of the company to be carried forward for deduction to the next accounting period under section 260(2) of CAA 2001.

Type 4

Any qualifying charitable donations made by the company so far as they exceed the company's profits of the accounting period and are available for surrender for the next accounting period under Part 5 (group relief).

Type 5

Allowable losses of the company available under section 8 of TCGA 1992 so far as not allowed for the accounting period or any previous accounting period.

- (2) For the purposes of section 92(2) an amount is excluded from a company's carry-forward losses if, before the day of the write-off, a claim is made in relation to the amount under section 37 or Part 5 (group relief) of this Act or section 260(3) of CAA 2001.
- (3) But, for the purposes of section 92(3), any such claim made on or after that day is to be disregarded in determining the company's carry-forward losses as at the end of any accounting period.
- (4) The set off of an amount against a company's carry-forward losses as at the end of any accounting period is to be done—
 - first, against those within Types 1 to 4, and
 - second, against those within Type 5.

96 Interaction with other tax provisions

- (1) A company, in calculating its profits of a trade for corporation tax purposes, is not prevented from deducting a sum by reason only that an amount of government investment in the company is written off.
- (2) Subsection (3) applies for the purposes of section 50 of TCGA 1992 and section 532 of CAA 2001 in their application in relation to a company.
- (3) Expenditure is not met by a public body (as defined in section 532(2) of CAA 2001) by reason only that an amount of government investment in the company is written off.
- (4) Section 464(1) of CTA 2009 does not prevent section 92 of this Act from applying if the writing-off of an amount of government investment in a company involves the extinguishment (in whole or in part) of a liability under a loan relationship.