



Income and Corporation Taxes Act 1970

1970 CHAPTER 10

PART VII

LOSS RELIEF

CHAPTER I

INCOME TAX

Trade etc. losses

168 Set-off against general income

- (1) Where any person sustains a loss in any trade, profession, employment or vocation carried on by him either solely or in partnership, he may, by notice in writing given within two years after the year of assessment, make a claim for relief from income tax on an amount of his income equal to the amount of the loss.
- (2) Relief may be given under subsection (1) above in respect of a person's loss sustained in the last preceding year of assessment in any trade, profession, employment or vocation still carried on by him in the year for which the claim is made, in so far as relief in respect of that loss has not already been given under that subsection or otherwise; and where relief is claimed by virtue of this subsection, it shall be given in priority to any relief under the said subsection (1) in respect of a loss sustained in the year for which the relief is claimed.
- (3) A claim for relief under this section may contain either or both of the following requirements—
 - (a) that the relief be given only by reference to the income of the person sustaining the loss, without extending to the income of that person's wife or husband ;
 - (b) that the relief be given without any reference to income treated by virtue of Chapter V of Part I of this Act (aggregation of child's income with that of

Status: This is the original version (as it was originally enacted).

parent) as income of the person sustaining the loss or of that person's wife or husband.

- (4) Subject to any requirement under subsection (3) above, relief under this section shall be given in respect of a loss sustained by any person by treating the loss as reducing first his income of the corresponding class, then his other income, then the income of the corresponding class of that person's wife or husband, then the wife or husband's other income, and then income treated by virtue of the said Chapter V as income of that person or that person's wife or husband.

For the purposes of this subsection, "income of the corresponding class" means earned or unearned income according as income arising during the same period as the loss to the person sustaining it from profits or gains of the same trade, profession, employment or vocation would have been that person's earned or unearned income.

- (5) Where relief under this section has been given to a person for any year of assessment, he shall not be entitled, in computing the amount of the assessment for any subsequent year, to a deduction of any portion of the amount in respect of which such relief has been obtained.
- (6) Where there is in any year of assessment a change on which a trade, profession or vocation is treated under section 154(1) of this Act as permanently discontinued, and a person engaged in carrying on the trade, profession or vocation immediately before the change continues to be so engaged immediately after it, the trade, profession or vocation carried on by him immediately before and immediately after the change shall, notwithstanding the discontinuance, be treated as the same trade, profession or vocation for the purposes of subsection (2) above, except as respects the computation of profits or gains and losses.
- (7) For the purposes of this section, the amount of a loss sustained in a trade shall be computed in like manner as the profits or gains arising or accruing from the trade are computed under the provisions of the Income Tax Acts applicable to Case I of Schedule D.
- (8) This section applies in relation to losses sustained in the occupation of woodlands in respect of which a person has elected under section 111 of this Act to be charged to income tax under Schedule D as it applies in relation to losses sustained in a trade.

169 Extension of right of set-off, to capital allowances

- (1) Subject to the provisions of this section, any claim made under section 168 above for relief in respect of a loss sustained by the claimant in any trade in any year of assessment (hereafter referred to as "the year of loss") may require the amount of that loss to be determined as if an amount equal to the capital allowances for the year of assessment for which the year of loss is the basis year were to be deducted in computing the profits or gains or losses of the trade in the year of loss; and a claim may be so made notwithstanding that, apart from those allowances, the claimant has not sustained a loss in the trade in the year of loss.
- (2) Capital allowances for any year of assessment shall be taken into account by virtue of this section only if and so far as they are not required to offset balancing charges for the year; and, for the purposes of this subsection, the capital allowances for a year of assessment shall be treated as required to offset balancing charges for the year up to the amount on which the balancing charges fall to be made after deducting from that amount the amount (if any) of capital allowances for earlier years which is carried

forward to that year and would, without the balancing charges, be non-effective in that year.

- (3) Where the capital allowances taken into account by virtue of this section are those for the year of assessment for which the claim is made or for the preceding year (the year of loss being the basis year for that year itself, or the claim being made by way of carry-forward of the loss by virtue of section 168(2) above), relief shall not be given by reference to those allowances in respect of an amount greater than the amount non-effective in the year for which the claim is made, or, in the case of allowances for the preceding year, the amount non-effective in both years.
- (4) For the purposes of this section—
 - (a) where the end of the basis period for a year of assessment (as defined in section 72 of the Capital Allowances Act 1968) falls in, or coincides with the end of, any year of assessment, that year is the basis year for the first-mentioned year of assessment, but so that, if a year of assessment would under the foregoing provision be the basis year both for that year itself and for another year of assessment, it shall be the basis year for the year itself and not for the other year,
 - (b) any reference to the capital allowances or balancing charges for a year of assessment shall be construed as a reference to those falling to be made in taxing the trade for that year (but not including, in the case of allowances, any part of the allowances for an earlier year carried forward under section 70(4) of the said Act of 1968),
 - (c) any reference to an amount of capital allowances non effective in a year shall be construed as referring to the amount to which, by reason of an insufficiency of profits or gains, effect cannot be given in taxing the trade for the year, and
 - (d) effect shall be deemed to be given in taxing the trade to allowances carried forward from an earlier year before it is given to allowances arising in a later year.
- (5) Where, on a claim made by virtue of this section, relief is not given under section 168 above for the full amount of the loss determined as mentioned in subsection (1) of this section, the relief shall be referred as far as may be to the loss sustained by the claimant in the trade rather than to the capital allowances in respect of the trade.
- (6) Subject to subsection (7) below, where for any year of assessment relief is given under section 168 above by reference to any capital allowances, then, for all the purposes of the Income Tax Acts, effect shall be deemed to have been given to those allowances up to the amount in respect of which relief is so given, as if (in accordance with section 70(2) of the Capital Allowances Act 1968) a deduction in respect thereof had been allowed in taxing the trade for that year, or, in the case of allowances for the following year, in taxing the trade for that following year; and any relief previously given for a subsequent year on the basis that effect had not been given to the allowances as aforesaid shall be adjusted where necessary by an assessment.
- (7) Where, in any year of assessment, a trade is permanently discontinued, or is treated for the purposes of section 154 above as permanently discontinued, and, immediately before the discontinuance, the trade was being carried on in partnership, then, notwithstanding subsection (6) above, for the purposes of any claim for relief made by virtue of section 171(4)(c) or 174 below and relating to that discontinuance, effect shall not be deemed to have been given either—

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

- (a) to any part of the capital allowances falling to be made in taxing the trade for that year by reason of relief given under section 168 above by reference to those allowances, or
- (b) to any part of the capital allowances falling to be made in taxing the trade for the preceding year by reason of relief so given by reference to them, in so far as that relief must be referred to the part of the allowances apportionable to the part of the year within twelve months of the discontinuance on an apportionment made by reference to the comparative lengths of the two parts of the year,

but where the same partner claims relief both under section 168 above and under one or other of sections 171(4) and 174 below in respect of the same allowances, the total amount for which relief is to be given to him by reference thereto shall not exceed the greater of the amounts for which, apart from any deficiency of income, relief might have been given under either section separately, and the total amount for which relief is to be given to all the partners under those sections in respect of any allowances shall not in any event exceed the amount of the allowances to which effect has not been given apart from those sections.

- (8) Where a person claiming relief under section 168 above has, since the end of the year for which the claim is made, carried on the trade in question in partnership, effect shall not be given to this section in relation to that claim except with the written consent of, or of the personal representatives of, every other person who has been engaged in carrying on the trade between the end of that year and the making of the claim:

Provided that, where the claim is for a loss sustained before an event treated as the permanent discontinuance of the trade, this subsection shall not require the consent of any person as having been so engaged since that discontinuance, or as the personal representative of such a person.

- (9) Relief from tax may be given by virtue of this section by reference to capital allowances for a year of assessment before the passing of any Act granting income tax for that year, as if income tax had been granted for the year without alteration; but if relief given to a person by virtue of this section for any year of assessment is affected by a subsequent alteration of the law, or by any discontinuance of the trade or other event occurring after the end of the year, any necessary adjustment may be made, and so much of any repayment of tax as exceeded the amount repayable in the events that happened may, if not otherwise made good, be assessed under Case VI of Schedule D and recovered from that person accordingly.
- (10) This section applies (with any necessary adaptations) in relation to a profession, employment or vocation, and in relation to the occupation of woodlands the profits or gains of which are assessable under Schedule D by virtue of an election under section 111 of this Act, as it applies in relation to a trade.

170 Restrictions on right of set-off

- (1) A loss (including any amount in respect of capital allowances which, by virtue of section 169 above, is to be treated as a loss) shall not be available for relief under section 168 above unless it is shown that, for the year of assessment in which the loss is claimed to have been sustained, the trade was being carried on a commercial basis and with a view to the realisation of profits in the trade or, where the carrying on of the trade formed part of a larger undertaking, in the undertaking as a whole:

Provided that this subsection shall not apply—

- (a) to a loss made, or an allowance in respect of expenditure incurred, by any person in the exercise of functions conferred by or under any enactment (including an enactment contained in a local or private Act), or
 - (b) to an allowance in respect of expenditure incurred before 6th April 1960.
- (2) Where during a year of assessment there is a change in the manner in which a trade is being carried on, it shall be treated for the purposes of this section as having been carried on throughout the year in the way in which it was being carried on by the end of the year.
- (3) Subject to subsection (4) below, where a trade is (or falls to be treated as being) carried on for a part only of a year of assessment by reason of its being (or falling to be treated as being) set up and commenced, or discontinued, or both, in that year, subsections (1) and (2) above shall have effect in relation to the trade as regards that part of that year as if any reference to the manner of carrying on the trade for or by the end of that year were a reference to the manner of carrying it on for or by the end of the said part thereof.
- (4) Where in any year of assessment there is a change in the persons engaged in carrying on a trade, then, for the purposes of the application of subsections (1) to (3) above in the case of any person who, being engaged in carrying on the trade immediately before the change, continues to be so engaged immediately after it, the trade carried on by that person immediately before the change shall be treated as continuing to be carried on by him notwithstanding the change, whether or not it falls to be treated for any other purpose as having been discontinued on the change.
- (5) For the purposes of this section, the fact that a trade was being carried on at any time so as to afford a reasonable expectation of profit shall be conclusive evidence that it was then being carried on with a view to the realisation of profits.
- (6) This section—
 - (a) applies to professions and vocations as it applies to trades, with references to a commercial basis construed accordingly, and
 - (b) has effect without prejudice to section 180 below (special restrictions for farming and market gardening).

171 Carry-forward against subsequent profits

- (1) Where a person has, in any trade, profession or vocation carried on by him either solely or in partnership, sustained a loss (to be computed in the same way as profits or gains under the provisions of the Income Tax Acts applicable to Cases I and II of Schedule D) in respect of which relief has not been wholly given either under section 168 above or under any other provision of those Acts, he may make a claim requiring that any portion of the loss for which relief has not been so given shall be carried forward and, as far as may be, deducted from or set off against the amount of profits or gains on which he is assessed to income tax under Schedule D in respect of that trade, profession or vocation for subsequent years of assessment.

In the application of this section to a loss sustained by a partner in a partnership, "the amount of profits or gains on which he is assessed" shall, in respect of any year, be taken to mean such portion of the amount on which the partnership is assessed to income tax under Schedule D in respect of the trade, profession or vocation as he would be required to include in a return of his total income for that year.

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

- (2) Any relief under this section shall be given as far as possible from the first subsequent assessment, and, so far as it cannot be so given, then from the next assessment, and so on.
- (3) Where in any year of assessment relief cannot be given, or cannot be wholly given, in respect of a loss carried forward under this section because the amount of the profits or gains of the trade assessed under Case I of Schedule D for that year is insufficient, any interest or dividends on investments arising in that year, being interest or dividends which would fall to be taken into account as trading receipts in computing the profits or gains of the trade for the purpose of assessment under that Case but for the fact that they have been subjected to tax under other provisions of the Income Tax Acts, shall be treated for the purposes of the application of this section as if they were profits or gains on which the person carrying on the trade was assessed under the said Case I in respect of that trade for that year of assessment, and relief shall be given accordingly by repayment or otherwise.
- (4) Where there is in any year of assessment a change on which a trade, profession or vocation is treated under section 154 above as permanently discontinued, and a person engaged in carrying on the trade, profession or vocation immediately before the change continues to be so engaged immediately after it, then—
 - (a) the trade, profession or vocation carried on by him immediately before and immediately after the change shall, notwithstanding the discontinuance, be treated as the same trade, profession or vocation for the purposes of this section, except as respects the computation of profits or gains and losses, and
 - (b) in respect of a loss sustained by him in the trade, profession or vocation in the part of the said year before the change, relief shall be given under this section from the assessment relating to the part of the year after the change as if it were an assessment for a subsequent year, and
 - (c) for the purposes of this section, there shall be treated as a loss so sustained in the part of the year before the change his share of the non-effective amount (if any) of any capital allowances falling to be made in taxing the trade, profession or vocation for that part of that year.

For the purposes of paragraph (c) above, the persons engaged in carrying on the trade, profession or vocation immediately before the change shall be treated as entitled to capital allowances in the shares in which they are then entitled to the profits of the trade, profession or vocation, and " the non-effective amount" means, in relation to any such allowances, the amount to which, because of an insufficiency of profits or gains, effect cannot be given in taxing the trade, profession or vocation.

- (5) Where a loss is sustained by a person in the occupation of woodlands, and that person, if he had made a profit, would by reason of his election under section 111 of this Act have been chargeable for the following year to income tax under Schedule D computed on the amount of that profit, this section shall apply so as to give relief in respect, of that loss in the same manner, and to the same extent, as if it were a loss sustained in a trade.
- (6) In so far as relief in respect of any loss has been given to any person under this section, that person shall not be entitled to claim relief in respect of that loss under any other provision of the Income Tax Acts.
- (7) So far as a claim under this section concerns the amount of the loss for any year of assessment after the year 1964-65, it must be made within six years after the year of assessment in question; but the question whether any and, if so, how much relief on

that amount should be given under this section against tax for any year of assessment may be the subject of a separate claim made not later than six years after that year of assessment.

172 Carry-forward where business transferred to a company

(1) Where—

- (a) a business carried on by any individual, or any individuals in partnership, has been transferred to a company in consideration solely or mainly of the allotment of shares of the company to that individual or those individuals, and
- (b) in the case of any individual to whom, or to whose nominee or nominees, shares have been so allotted, his total income for any year of assessment throughout which he is the beneficial owner of the shares, and throughout which the company carries on the business, includes any income derived by him from the company, whether by way of dividends on those shares or otherwise,

then, subject to subsection (2) below, section 171 above (except subsection (4)) shall apply as if the income so derived were profits or gains on which that individual was assessed under Schedule D in respect of that business for that year.

- (2) Where, under the said section 171 as applied by subsection (1) above, a loss falls to be deducted from or set off against any income for any year of assessment, the deduction or set-off shall be made in the first place against that part, if any, of the income in respect of which the individual has been, or is liable to be, assessed to tax for that year.
- (3) This section, in its application to the year of assessment in which a business is transferred, shall have effect as if, for the reference in subsection (1)(b) to the year of assessment throughout which the individual is the beneficial owner of the shares and the business is carried on by the company, there were substituted a reference to the period from the date of transfer to the following 5th April.
- (4) Where a change to which section 171(4) above applies has occurred before a transfer to which this section applies, paragraph (a), but not paragraph (c), of the said section 171(4) shall for the purposes of this section apply in relation to the earlier change as it applies for the purposes of the said section 171.

173 Carry-forward as losses of amounts taxed under s. 53

- (1) Subject to the provisions of this section, where under section 53 of this Act (payments not out of profits or gains brought into charge to income tax) a person has been assessed to income tax in respect of a payment made wholly and exclusively for the purposes of a trade, profession or vocation, the amount on which tax has been paid under that assessment shall be treated for the purposes of sections 171 and 172 above as though it were a loss sustained in that trade, profession or vocation, and relief in respect thereof shall be allowed accordingly.
- (2) Relief shall not be allowed by virtue of this section in respect of any payment, or part of a payment, which is not ultimately borne by the person assessed, or which is charged to capital.
- (3) This section shall not apply—
 - (a) to any payment to which the said section 53 applies by virtue of section 89(1) of this Act (Schedule A, and associated charges: non-residents),

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

- (b) to any such payment of rent as is referred to in section 157(4) of this Act (easements in connection with radio relay services),
- (c) to any capital sum paid in respect of any patent rights assessed under the said section 53 by virtue of section 380 of this Act,
- (d) to any payment of, or on account of, copyright royalties to which section 391 of this Act applies, or
- (e) to any payment to which the said section 53 applies by virtue of section 477 of this Act (manufactured dividends).

174 Carry-back of terminal losses

- (1) Where a trade, profession or vocation is permanently discontinued, and any person then carrying it on, either solely or in partnership, has sustained therein a loss to which this section applies (hereafter referred to as a "terminal loss"), that person may, subject to the provisions of this section, make a claim requiring that the amount of the terminal loss shall, as far as may be, be deducted from or set off against the amount of profits or gains on which he has been charged to income tax under Schedule D in respect of the trade, profession or vocation for the three years of assessment last preceding that in which the discontinuance occurs; and there shall be made all such reductions of assessments or repayments of tax as may be necessary to give effect to the claim :

Provided that relief shall not be given in respect of the same matter both under this section and under some other provision of the Income Tax Acts.

- (2) Any relief under this section shall be given as far as possible from the assessment for a later rather than an earlier year.
- (3) Where a claim under this section is made in respect of a terminal loss sustained in a trade, and relief cannot be given, or cannot be wholly given, against the profits or gains of the trade charged to income tax under Schedule D for any year because the amount of those profits or gains is insufficient, any interest or dividends on investments arising in that year, being interest or dividends which would fall to be taken into account as trading receipts in computing the profits or gains of the trade for the purpose of assessment under Case I of that Schedule but for the fact that they have been subjected to tax under other provisions of the Income Tax Acts, shall be treated for the purposes of the application of this section as if they were profits or gains on which the person carrying on the trade was assessed under the said Case I in respect of that trade for that year of assessment, and relief shall be given accordingly by repayment or otherwise.
- (4) The profits or gains on which a person or partnership has been charged to income tax for any year of assessment shall be treated for the purposes of any relief under this section from the assessment for that year as reduced by the amount of those profits or gains applied in making any payment from which income tax was deducted, but was not accounted for because the payment was made out of profits or gains brought into charge to income tax; and the like reduction shall be made in the amount of the terminal loss for which relief may be given under this section from the assessments for earlier years unless the payment was one which, if not made out of profits or gains brought into charge to income tax, could have been assessed to income tax under section 53 of this Act, and, if so assessed, could have been treated as a loss by virtue of section 173 above.
- (5) The question whether a person has sustained any and, if so, what terminal loss in a trade, profession or vocation shall be determined for the purposes of this section by

taking the amounts (if any) of the following, in so far as they have not otherwise been taken into account so as to reduce or relieve any charge to tax—

- (a) the loss sustained by him in the trade, profession or vocation in the year of assessment in which it is permanently discontinued,
 - (b) the relevant capital allowances for that year of assessment,
 - (c) the loss sustained by him in the trade, profession or vocation in the part of the preceding year of assessment beginning twelve months before the date of the discontinuance, and
 - (d) the same fraction of the relevant capital allowances for that preceding year of assessment as the part thereof beginning twelve months before the discontinuance is of a year.
- (6) In subsection (5) above " the relevant capital allowances " means, in relation to any year of assessment, any capital allowances falling to be made in taxing the trade, profession or vocation for that year, excluding amounts carried forward from an earlier year; and, for the purposes of paragraphs (a) and (c) of that subsection, the amount of a loss shall, subject to the provisions of this section, be computed in the same way as profits or gains under the provisions of the Income Tax Acts applicable to Cases I and II of Schedule D.
- (7) Section 173 above, and sections 324 and 328 of this Act (capital redemption business, non-resident banks etc.), shall apply to the computation of losses, or of profit or loss, for any purpose of this section as they apply to the computation thereof for the corresponding purposes of section 171 above.
- (8) Where, on the permanent discontinuance of a trade which consists of or includes the working of a mine, oil well or other source of mineral deposits within the meaning of Chapter III of Part I of the Capital Allowances Act 1968, a claim for relief is made both under this section and under section 15(1) of that Act (carry-back of balancing allowances), the balancing allowance in respect of which the claim is made under the said section 15(1) shall be left out of account for the purposes of subsection (5) above, but relief under this section shall be given in priority to relief under the said section 15(1).
- (9) Where a person claiming relief under this section on a discontinuance has, since the beginning of the third year of assessment preceding that in which the discontinuance occurs, carried on the trade, profession or vocation in partnership—
- (a) in subsection (1) above, " the amount of profits or gains on which he has been charged to income tax " shall be taken to mean, in respect of any year or part of a year for which the partnership was assessed in respect of the trade, profession or vocation, such portion of the amount of the profits or gains on which the partnership has been, or is treated by virtue of subsection (4) above as having been, charged to income tax in respect of it for that year or part of a year as would be required to be included in a return of his total income for that year,
 - (b) any reduction in the amount of his terminal loss which falls to be made under the said subsection (4) by reason of profits or gains having been applied by the partnership in any such year or part of a year in making any payment shall be limited to the same proportion of the profits or gains brought into charge which were so applied, and
 - (c) if he was carrying on the trade, profession or vocation immediately before the discontinuance, the amounts to be included in his terminal loss by virtue of subsection (5)(b) or (d) above shall be such part only of the amounts therein

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

mentioned (in so far as they have not otherwise been taken into account so as to reduce or relieve any charge to tax) as would fall to his share on a division made according to the shares in which the partners were then entitled to the profits of the trade, profession or vocation.

(10) For all the purposes of this section, a trade, profession or vocation shall be treated as discontinued, and a new trade, profession or vocation as set up and commenced, when it is so treated for the purposes of section 154 of this Act; but—

(a) a person who continues to be engaged in carrying it on immediately after such a discontinuance shall not be entitled to relief in respect of any terminal loss on that discontinuance, and

(b) on any discontinuance, a person not continuing to be so engaged may be given relief in respect of a terminal loss against profits or gains on which he was charged in respect of the same trade, profession or vocation for a period before a previous discontinuance, if he has been continuously engaged in carrying it on between the two discontinuances, and, in his case, if the previous discontinuance occurred within twelve months before the other—

(i) it shall be disregarded for the purposes of paragraphs (a) and (c) of subsection (5) above, except that those paragraphs shall be taken to include any amount on which relief could have been allowed to him as for a loss sustained before the previous discontinuance by virtue of section 171(4)(c) above, so far as it is referable to a period within those twelve months, and

(ii) paragraph (d) of the said subsection (5) shall be taken to include the whole amount of the allowances in question, instead of the fraction there mentioned.

(11) Where a trade, profession or vocation is being carried on by any persons in partnership immediately before it is permanently discontinued, relief under this section given to one of them on the discontinuance shall not, in relation to a claim made by another of them by virtue of section 171(4)(c) above, be taken to affect the non-effective amount of any allowances within the meaning of the said section 171(4)(c).

(12) A claim for relief under this section may require that, in so far as they have not been otherwise taken into account so as to reduce or relieve any charge to tax, capital allowances in respect of the trade, profession or vocation under Part I of the Capital Allowances Act 1968, being allowances which fall to be made to the claimant by way of discharge or repayment of tax, and to be so made for the year of assessment in which the discontinuance occurs or the preceding year of assessment, shall be added to the terminal loss sustained by him (or, if he has not sustained a terminal loss computed in accordance with the provisions of this section, shall be treated as a terminal loss so sustained) and the allowances to be taken into account for this purpose may include allowances arising before a previous discontinuance:

Provided that—

(a) there shall be taken into account such fraction only of the allowances for the said preceding year of assessment as the part of that year beginning twelve months before the discontinuance giving rise to the claim is of a year, and

(b) the allowances for any year shall not be treated as including any amounts carried forward from an earlier year.

(13) Where a person occupying woodlands has elected to be charged to income tax in respect thereof under Schedule D, this section shall apply to a terminal loss sustained

by him in the occupation of the woodlands as it applies to a terminal loss sustained in a trade.

175 Treatment of interest as a loss for purposes of carry forward and carry-back

- (1) Where a payment to which this section applies is money wholly and exclusively laid out or expended for the purposes of a trade, profession or vocation the profits of which are chargeable to tax under Case I or Case II of Schedule D, and full effect cannot be given to the relief specified in subsection (2) below as respects the payment by reason of a want or deficiency of income of the year of assessment in which the payment is made, the amount unallowed may be carried forward to succeeding years of assessment as if it were a loss carried forward under section 171 above, or may be treated for the purposes of section 174 above as a loss sustained at the date of payment.
- (2) This section applies to—
 - (a) interest eligible for relief under section 57 of this Act (loans for purchase or improvement of land),
 - (b) payments of interest eligible for relief under section 62 of this Act (certain pre-1970 loans),
 - (c) payments in respect of tithe redemption annuities to which section 66(2) of this Act applies, and
 - (d) payments of interest to which section 445(3)(b) of the Income Tax Act 1952 (building societies etc.) applied.
- (3) So far as it relates to the carrying forward of payments mentioned in paragraphs (c) and (d) of subsection (2) above, this section shall be deemed always to have had effect.

Case VI losses

176 Case VI losses

- (1) Where in any year of assessment a person sustains a loss in any transaction, whether he was engaged therein solely or in partnership, being a transaction of such a nature that, if any profits had arisen therefrom, he would have been liable to be assessed to income tax in respect thereof under Case VI of Schedule D, he may make a claim requiring that the amount of the loss sustained by him shall, as far as may be, be deducted from or set off against the amount of any profits or gains arising from any transaction in respect of which he is assessed for that year under the said Case VI, and that any portion of the loss for which relief is not so given shall, as far as may be, be carried forward and deducted from or set off against the amount of any profits or gains arising from any transaction in respect of which he is assessed to income tax under the said Case VI for any subsequent year of assessment.
- (2) In the application of this section to a loss sustained by a partner in a partnership, " the amount of any profits or gains arising from any transaction in respect of which he is assessed " shall be taken to mean in respect of any year such portion of the amount on which the partnership is assessed under Case VI of Schedule D in respect of any transaction as falls to be taken into account in computing his total income for that year.
- (3) Any relief under this section by way of the carrying forward of the loss shall be given as far as possible from the first subsequent assessment in respect of any such profits or gains as aforesaid for any year, and, so far as it cannot be so given, then from the next such assessment, and so on.

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

- (4) This section does not apply to any loss sustained in a transaction falling within section 80, 81 or 82 of this Act (premiums, leases at undervalue, etc.).
- (5) So far as a claim under this section concerns the amount of the loss for any year of assessment after the year 1964-65, it must be made within six years after the year of assessment in question ; but the question whether any and, if so, how much relief on that amount should be given under this section against tax for any year of assessment may be the subject of a separate claim made not later than six years after that year of assessment.

CHAPTER II

CORPORATION TAX

Trade etc. losses

177 Losses other than terminal losses

- (1) Where in any accounting period a company carrying on a trade incurs a loss in the trade, the company may make a claim requiring that the loss be set off for the purposes of corporation tax against any trading income from the trade in succeeding accounting periods; and (so long as the company continues to carry on the trade) its trading income from the trade in any succeeding accounting period shall then be treated as reduced by the amount of the loss, or by so much of that amount as cannot, on that claim or on a claim (if made) under subsection (2) below, be relieved against income or profits of an earlier accounting period.
- (2) Where in any accounting period a company carrying on a trade incurs a loss in the trade, then (subject to subsection (4) below) the company may make a claim requiring that the loss be set off for the purposes of corporation tax against profits (of whatever description) of that accounting period and, if the company was then carrying on the trade and the claim so requires, of preceding accounting periods ending within the time specified in subsection (3) below; and, subject to that subsection and to any relief for an earlier loss, the profits of any of those periods shall then be treated as reduced by the amount of the loss, or by so much of that amount as cannot be relieved under this subsection against profits of a later accounting period.
- (3) The time referred to in subsection (2) above is a time equal in length to the accounting period in which the loss is incurred; but the amount of the reduction which may be made under that subsection in the profits of an accounting period falling partly before that time shall not exceed a part of those profits proportionate to the part of the period falling within that time.
- (4) Subsection (2) above shall not apply to trades falling within Case V of Schedule D; and, except in so far as it represents an excess in respect of expenditure incurred before the year 1960-61 of capital allowances over balancing charges, a loss incurred in a trade in any accounting period shall not be relieved under that subsection unless the trade is one carried on in the exercise of functions conferred by or under any enactment (including an enactment contained in a local or private Act), or it is shown that for that accounting period the trade was being carried on a commercial basis and with a view to the realisation of gain in the trade or in any larger undertaking of which the trade formed part.

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

This subsection has effect without prejudice to section 180 below (special restrictions for farming and market gardening).

- (5) For the purposes of subsection (4) above, the fact that a trade was being carried on at any time so as to afford a reasonable expectation of gain shall be conclusive evidence that it was then being carried on with a view to the realisation of gain; and where in an accounting period there is a change in the manner in which a trade is being carried on, it shall for those purposes be treated as having throughout the accounting period been carried on in the way in which it was being carried on by the end of that period.
- (6) The amount of a loss incurred in a trade in an accounting period shall be computed for the purposes of this section in the same way as trading income from the trade in that period would have been computed.
- (7) For the purposes of this section " trading income " means, in relation to any trade, the income which falls or would fall to be included in respect of the trade in the total profits of the company; but where in an accounting period a company incurs a loss in a trade in respect of which it is within the charge to corporation tax under Case I or Case V of Schedule D, and in any later accounting period to which the loss or any part of it is carried forward under subsection (1) above relief in respect thereof cannot be given, or cannot wholly be given, because the amount of the trading income of the trade is insufficient, any interest or dividends on investments which would fall to be taken into account as trading receipts in computing that trading income but for the fact that they have been subjected to tax under other provisions shall be treated for the purposes of subsection (1) above as if they were trading income of the trade.
- (8) Where in an accounting period the charges on income paid by a company—
 - (a) exceed the amount of the profits against which they are deductible, and
 - (b) include payments made wholly and exclusively for the purposes of a trade carried on by the company,then, up to the amount of that excess or of those payments, whichever is the less, the charges on income so paid shall in computing a loss for the purposes of subsection (1) above be deductible as if they were trading expenses of the trade.
- (9) In this section references to a company carrying on a trade refer to the company carrying it on so as to be within the charge to corporation tax in respect of it.
- (10) A claim under subsection (1) above must be made within six years after the end of the accounting period in which the loss is incurred, and must be so made notwithstanding that relief cannot be given in respect of the loss until after the end of that period of six years; and a claim under subsection (2) above must be made within two years from the end of the accounting period in which the loss is incurred.

178 Terminal losses

- (1) Where a company ceasing to carry on a trade has in any accounting period falling wholly or partly within the previous twelve months incurred a loss in the trade, the company may make a claim requiring that the loss be set off for the purposes of corporation tax against trading income from the trade in accounting periods falling wholly or partly within the three years preceding those twelve months (or within any less period throughout which the company has carried on the trade); and, subject to subsections (2) to (5) below and to any relief for earlier losses, the trading income of any of those periods shall be then treated as reduced by the amount of the loss, or by

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

so much of that amount as cannot be relieved under this subsection against income of a later accounting period:

Provided that relief shall not be given under this subsection in respect of any loss in so far as the loss has been or can be otherwise taken into account so as to reduce or relieve any charge to tax.

- (2) Where a loss is incurred in an accounting period falling partly outside the twelve months mentioned in subsection (1) above, relief shall be given under that subsection in respect of a part only of that loss proportionate to the part of the period falling within those twelve months; and the amount of the reduction which may be made under that subsection in the trading income of an accounting period falling partly outside the three years there mentioned shall not exceed a part of that income proportionate to the part of the period falling within those three years.
- (3) A claim for relief under this section may require that capital allowances in respect of the trade, being allowances which fall to be made to the company by way of discharge or repayment of tax, and to be so made for an accounting period falling wholly or partly within the twelve months ending when the company ceases to carry on the trade, shall (so far as they cannot be otherwise taken into account so as to reduce or relieve any charge to corporation tax) be added to the loss incurred by the company in that accounting period or, if the company has not incurred a loss in the period, shall be treated as a loss so incurred:

Provided that the allowances for any period shall not be treated as including amounts carried forward from an earlier period.

- (4) Subsections (6) to (9) of section 177 above shall apply for the purposes of this section as they apply for the purposes of subsection (1) of that section; and relief shall not be given under this section in respect of a loss incurred in a trade so as to interfere with any relief under section 248 of this Act (charges on income) in respect of payments made wholly and exclusively for the purposes of that trade.
- (5) A claim under this section must be made within six years from the time when the company ceases to carry on the trade.

Case VI losses

179 Case VI losses

- (1) Subject to subsection (2) below, where in any accounting period a company incurs a loss in a transaction in respect of which the company is within the charge to corporation tax under Case VI of Schedule D, the company may make a claim requiring that the loss be set off against the amount of any income arising from transactions in respect of which the company is assessed to corporation tax under that Case for the same or any subsequent accounting period; and the company's income in any accounting period from such transactions shall then be treated as reduced by the amount of the loss, or by so much of that amount as cannot be relieved under this section against income of an earlier accounting period.
- (2) This section shall not apply to a loss incurred in a transaction falling within section 80, 81 or 82 of this Act (premiums, leases at under-value, etc.).
- (3) A claim under this section must be made within six years after the end of the accounting period in which the loss is incurred, and must be so made notwithstanding

that relief cannot be given in respect of the loss until after the end of that period of six years.

CHAPTER III

INCOME TAX AND CORPORATION TAX

180 Restriction of relief under ss. 168 and 177 in case of farming and market gardening

- (1) Any loss incurred in a trade of farming or market gardening shall be excluded from section 168 above if in each of the prior five years a loss was incurred in carrying on that trade; and where a loss is so excluded any related capital allowance shall also be excluded from that section.
- (2) Any loss incurred in any accounting period by a company in carrying on a trade of farming or market gardening shall be excluded from section 177(2) above if a loss, computed without regard to capital allowances, was incurred in carrying on that trade in that accounting period, and in each of the chargeable periods wholly or partly comprised in the prior five years.
- (3) Subsections (1) and (2) above shall not restrict relief for any loss or for any capital allowance, if it is shown by the claimant that the whole of his farming or market gardening activities in the year next following the prior five years are of such a nature, and carried on in such a way, as would have justified a reasonable expectation of the realisation of profits in the future if they had been undertaken by a competent farmer or market gardener, but that, if that farmer or market gardener had undertaken those activities at the beginning of the prior period of loss, he could not reasonably have expected the activities to become profitable until after the end of the year next following the prior period of loss.
- (4) Subsections (1) and (2) above shall not restrict relief where the carrying on of the trade forms part of, and is ancillary to, a larger trading undertaking.
- (5) In this section—
 - "basis year", in relation to any capital allowance, shall be construed in accordance with section 169(4)(a) above,
 - "chargeable period", in relation to a company, means any accounting period, or any basis period ending before its first accounting period, "basis period" having the meaning given in section 72 of the Capital Allowances Act 1968,
 - "prior five years"—
 - (a) in relation to a loss incurred in a year of assessment, means the last five years of assessment before that year, and
 - (b) in relation to a loss incurred in a company's accounting period, means the last five years before the beginning of the accounting period,
 - "prior period of loss" means the prior five years, except that, if losses were incurred in the trade in successive years of assessment or chargeable periods amounting in all to a period longer than five years (and ending when the prior five years end), it means that longer period, and in applying this definition to a chargeable period of a company "losses" means losses computed without regard to capital allowances, and

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

" farming " and " market gardening " shall be construed in accordance with the definitions of those terms under section 526(5) of this Act, but as if those definitions were not restricted to activities in the United Kingdom.

- (6) For the purposes of this section, a capital allowance is related to a loss incurred in a trade if it falls to be made in taxing that trade and its basis year is the year of assessment in which the loss was incurred.
- (7) In ascertaining for the purposes of this section whether a loss was incurred in any part of the prior five years, or earlier, the rules applicable to Case I of Schedule D shall be applied; and in this section " loss computed without regard to capital allowances " means, in relation to a chargeable period of a company, a loss so ascertained, but so that, notwithstanding section 73(2) of the Capital Allowances Act 1968, no account shall be taken of any allowance or charge under that Act (including the enactments which under this Act are to be treated as contained in Part I of that Act).
- (8) Subsections (1) and (2) above shall not restrict relief for any loss or capital allowance if the trade was set up and commenced within the prior five years, and, for the purposes of this subsection, a trade shall be treated as discontinued, and a new trade set up, in any event which under any of the provisions of the Tax Acts is to be treated as equivalent to the permanent discontinuance or setting up of a trade:

Provided that a trade shall not be treated as discontinued if, under section 252(2) of this Act or section 17 of the Finance Act 1954 (company reconstructions) it is not to be treated as discontinued for the purpose of capital allowances and charges.

- (9) Where at any time there has been a change in the persons engaged in carrying on a trade, this section shall, notwithstanding subsection (8) above, apply to any person who was engaged in carrying on the trade immediately before and immediately after the change as if the trade were the same before and after without any discontinuance, and as if—
- (a) a husband and his wife were the same person, and
 - (b) a husband or his wife were the same person as any company of which either the husband or the wife has control, or of which the two of them have control,
- and accordingly relief from income tax or from corporation tax may be restricted under this section by reference to losses some of which are incurred in years of assessment and some, computed without regard to capital allowances, are incurred in a company's chargeable periods.

In this subsection " control" has the same meaning as in Chapter III of Part XI of this Act (close companies).