

Status: Point in time view as at 25/07/1991.

Changes to legislation: There are currently no known outstanding effects for the Finance Act 1991, SCHEDULE 15. (See end of Document for details)

SCHEDULES

SCHEDULE 15

Section 73.

RELIEF FOR COMPANY TRADING LOSSES

The Taxes Management Act 1970 (c. 9)

- 1 (1) In section 86 of the Taxes Management Act 1970 (interest on overdue tax) after subsection (2) there shall be inserted—

“(2A) In any case where—

- (a) on a claim under section 393A(1) of the principal Act, the whole or any part of a loss incurred in an accounting period (the “later period”) is set off for the purposes of corporation tax against profits of a preceding accounting period (the “earlier period),
- (b) the earlier period does not fall wholly within the period of twelve months immediately preceding the later period, and
- (c) if the claim had not been made, an amount of corporation tax assessed for the earlier period would carry interest in accordance with this section,

then, in determining the amount of interest payable under this section on corporation tax unpaid for the earlier period, no account shall be taken of any reduction in the amount of that tax which results from the claim, except so far as concerns interest for any time after the day following the expiry of the period of nine months from the end of the later period.”

- (2) The subsection (2A) inserted by sub-paragraph (1) above shall be omitted where the accounting period referred to in that subsection as the earlier period ends after the appointed day for the purposes of section 86 of the ^{M1}Finance (No.2) Act 1987 so far as relating to the omission of section 86(2)(d) of the Taxes Management Act 1970.

Marginal Citations

M1 1987 c. 51.

- 2 In section 87A of that Act (which is set out in section 85 of the Finance (No.2) Act 1987 and which makes fresh provision for interest on overdue corporation tax) there shall be added at the end—

“(6) In any case where—

- (a) on a claim under section 393A(1) of the principal Act, the whole or any part of a loss incurred in an accounting period (the “later period”) is set off for the purposes of corporation tax against profits of a preceding accounting period (the “earlier period),

Status: Point in time view as at 25/07/1991.

Changes to legislation: There are currently no known outstanding effects for the Finance Act 1991, SCHEDULE 15. (See end of Document for details)

- (b) the earlier period does not fall wholly within the period of twelve months immediately preceding the later period, and
 - (c) if the claim had not been made, an amount of corporation tax for the earlier period would carry interest in accordance with this section,
- then, in determining the amount of interest payable under this section on corporation tax unpaid for the earlier period, no account shall be taken of any reduction in the amount of that tax which results from the claim, except so far as concerns interest for any time after the date on which any corporation tax for the later period became (or, as the case may be, would have become) due and payable, as mentioned in subsection (1) above.”

The Income and Corporation Taxes Act 1988 (c. 1)

- 3 In section 114 of the Taxes Act 1988 (special rules for computing profits and losses) in subsection (3), paragraph (c) and the word “and” immediately preceding it shall cease to have effect.
- 4 In section 118 of that Act (restriction on relief: companies)—
- (a) in subsection (1) (treatment of certain amounts which may be given or allowed under section 393(2) etc) for “393(2)” there shall be substituted “393A(1)”; and
 - (b) in subsection (2), in the definition of “the aggregate amount” (certain amounts given or allowed under section 393(2) etc to form part of that amount) for “393(2)” there shall be substituted “393A(1)”.
- 5 (1) In section 242 of that Act (set-off of losses etc against surplus of franked investment income) in subsection (2)(a) (surplus to be treated as an amount of profits chargeable to corporation tax for purpose of setting of trading losses against total profits under section 393(2)) for “393(2)” there shall be substituted “393A(1)”.
- (2) In subsection (4) of that section (restriction imposed by section 393(3) etc on relief to apply only to relief given apart from the section in case of certain claims under the section relating to section 393(2) etc)—
- (a) for “393(2)” there shall be substituted “393A(1)”; and
 - (b) in paragraph (a), for “393(3)” there shall be substituted “393A(2)”.
- (3) In subsection (8)(a) of that section (time limit for claims under the section for purpose of setting of trading losses against total profits under section 393(2)) for the words from “section 393(2) to “is incurred there shall be substituted the words “subsection (1) of section 393A, the time limit that would, by virtue of subsection (10) or (11) of that section, be applicable in the case of a claim under that section in respect of those losses”.
- 6 (1) In section 243 of that Act, in subsection (1) (company with surplus of franked investment income may require that surplus to be taken into account for relief under section 393(1) or 394) the words “or 394” shall cease to have effect.
- (2) Subsection (5) of that section (claim relating to section 394) shall cease to have effect.
- (3) In subsection (6) of that section, paragraph (b) (time limit for claims so far as relating to section 394) shall cease to have effect.

Status: Point in time view as at 25/07/1991.

Changes to legislation: There are currently no known outstanding effects for the Finance Act 1991, SCHEDULE 15. (See end of Document for details)

- 7 (1) In section 343 of that Act (company reconstructions without a change of ownership) in subsection (3) (predecessor not entitled to relief under section 394 except as provided by subsection (6); and successor entitled to relief under section 393(1) subject to claim made by predecessor under section 393(2) etc)—
- (a) the words from the beginning to “subsection (6) below; and” shall cease to have effect; and
 - (b) for “393(2)” there shall be substituted “393A(1) ”.
- (2) Subsection (6) of that section shall cease to have effect.
- (3) In subsection (7) of that section—
- (a) the words from “then no relief” to “subject to that” shall be omitted; and
 - (b) for “(6)” there shall be substituted “(5) ”.
- 8 In section 393 of that Act (losses other than terminal losses)—
- (a) in subsection (1), for the words “subsection (2) below” there shall be substituted the words “section 393A(1) ”; and
 - (b) in subsection (11) (time limits for claims under section 393) the words from “and a claim under subsection (2) above” onwards shall cease to have effect.
- 9 In section 395 of that Act (leasing contracts and company reconstructions) in subsection (1) (limitation of relief under section 393(1) or (2) in respect of losses incurred on leasing contract of machinery or plant) in paragraph (b) for the words “subsection (1) or (2) of section 393 there shall be substituted the words “section 393(1) or 393A(1) ”.
- 10 In section 397(2) of that Act (which excludes certain losses in a trade of farming or market gardening from relief under section 393(2)) for “393(2)” there shall be substituted “393A(1) ”.
- 11 In section 399 of that Act (dealings in commodity futures etc: withdrawal of loss relief) in subsection (2) (relief not to be given under section 393(2) etc in respect of certain losses) for “393(2)” there shall be substituted “393A(1) ”.
- 12 In section 400 of that Act (write-off of government investment) in subsection (4) (exclusion of amounts in respect of which claim has been made under section 393(2) etc) for “393(2)” there shall be substituted “393A(1) ”.
- 13 (1) In section 403 of that Act (losses etc which may be surrendered by way of group relief) in subsection (1) (claimant company entitled to relief in respect of loss incurred by surrendering company and computed as for the purposes of section 393(2)) for “393(2) there shall be substituted “393A(1) ”.
- (2) In subsection (2) of that section (subsection (1) not to apply to so much of loss as is excluded from section 393(2) by section 393(5) etc) for the words “subsection (2) of section 393 by subsection (5) of that section there shall be substituted the words “subsection (1) of section 393A by subsection (3) of that section ”.
- (3) In subsection (10) of that section for “393(2) in both places where occurring there shall be substituted “393A(1) ”.
- 14 (1) In section 407 of that Act (relationship between group relief and other relief) in subsection (1)(b), for “393(2)” there shall be substituted “393A(1) ”.

Status: Point in time view as at 25/07/1991.

Changes to legislation: There are currently no known outstanding effects for the Finance Act 1991, SCHEDULE 15. (See end of Document for details)

- (2) In subsection (2)(a) of that section, for “393(2) or 394” there shall be substituted “393A(1)(b)”.
- 15 In section 434 of that Act (insurance companies: franked investment income etc) in subsection (2) (ascertaining for purposes of section 393 or 394 whether and to what extent company has incurred loss on its life assurance business) for “394” there shall be substituted “393A(1)”.
- 16 In section 458 of that Act (capital redemption business) in subsection (2) (ascertaining whether and to what extent person has incurred loss on capital redemption business for purposes of section 380 or sections 393 and 394) for “394” there shall be substituted “393A(1)”.
- 17 In section 492 of that Act (treatment of oil extraction activities etc for tax purposes) in subsection (3) (restriction on relief under section 393(2) against ring fence profits) for “393(2)” there shall be substituted “393A(1)”.
- 18 In section 503(1) of that Act (commercial letting of furnished holiday accommodation to be treated as trade for purposes of section 394 etc) for “394” there shall be substituted “393A(1)”.
- 19 (1) In section 518 of that Act (harbour reorganisation schemes) in subsection (3) (person to whom harbour authority transferred entitled to relief under section 393(1) in certain circumstances but subject to any claim made by transferor under section 393(2)) for “393(2)” there shall be substituted “393A(1)”.
- (2) Subsection (6) of that section (transferor not entitled to relief under section 394 in respect of the trade) shall cease to have effect.
- 20 (1) After section 768 of that Act (change in ownership: trading losses not to be carried forward) there shall be inserted the following section—

“768A Change in ownership: disallowance of carry back of trading losses.

- (1) In any case where—
- (a) within any period of three years there is both a change in the ownership of a company and (either earlier or later in that period, or at the same time) a major change in the nature or conduct of a trade carried on by the company, or
 - (b) at any time after the scale of the activities in a trade carried on by a company has become small or negligible, and before any considerable revival of the trade, there is a change in the ownership of the company,
- no relief shall be given under section 393A(1) by setting a loss incurred by the company in an accounting period ending after the change in ownership against any profits of an accounting period beginning before the change in ownership.
- (2) Subsections (2) to (4), (8) and (9) of section 768 shall apply for the purposes of this section as they apply for the purposes of that section.
- (3) This section applies in relation to changes in ownership occurring on or after 14th June 1991.”

Status: Point in time view as at 25/07/1991.

Changes to legislation: There are currently no known outstanding effects for the Finance Act 1991, SCHEDULE 15. (See end of Document for details)

- (2) In section 769 of that Act (rules for ascertaining change in ownership in company)—
- (a) in subsections (1), (2)(d) and (5), for the words “section 768” there shall be substituted the words “sections 768 and 768A ”; and
 - (b) in subsections (3) and (4), after the words “section 768” there shall be inserted the words “or 768A ”.
- 21 In section 808 of that Act (restriction on deduction of interest or dividends from trading income so as to give rise to losses to be set off under section 393 or 436) after “393” there shall be inserted “393A(1) ”.
- 22 In section 825 of that Act, in subsection (4) (restrictions on repayment supplement) after paragraph (b) there shall be added the words “and
- (c) a repayment of corporation tax or income tax falling to be made as a result of a claim under section 393A(1) to have the whole or any part of a loss incurred in an accounting period set off against profits of an earlier accounting period (“the earlier period)—
 - (i) shall, in a case where the earlier period falls wholly within the period of twelve months immediately preceding the accounting period in which the loss was incurred, be treated as a repayment of tax paid for the earlier period; and
 - (ii) in any other case, shall be treated as a repayment of tax paid for the accounting period in which the loss is incurred; and
 - (d) a payment of the whole or part of a tax credit falling to be made as a result of a claim under section 242, to the extent that a surplus of franked investment income for an accounting period (the “earlier period) is treated as there mentioned for the purpose of setting a loss incurred in a later accounting period against total profits under section 393A(1)—
 - (i) shall, in a case where the earlier period falls wholly within the period of twelve months immediately preceding the accounting period in which the loss is incurred, be treated as a payment in respect of franked investment income received in the earlier period; and
 - (ii) in any other case, shall be treated as a payment in respect of franked investment income received in the accounting period in which the loss is incurred.”
- 23 In section 826 of that Act (interest on tax overpaid) after subsection (7) there shall be inserted—
- “(7A) In any case where—
- (a) a company carrying on a trade incurs a loss in the trade in an accounting period (“the later period),
 - (b) as a result of a claim under section 393A(1), the whole or any part of that loss is set off for the purposes of corporation tax against profits (of whatever description) of an earlier accounting period (“the earlier period) which does not fall wholly within the period of twelve months immediately preceding the later period, and
 - (c) a repayment falls to be made of corporation tax paid for the earlier period or of income tax in respect of a payment received by the company in that accounting period,

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Changes to legislation: There are currently no known outstanding effects for the Finance Act 1991, SCHEDULE 15. (See end of Document for details)

then, in determining the amount of interest (if any) payable under this section on the repayment referred to in paragraph (c) above, no account shall be taken of any increase in the amount of that repayment as a result of the claim under section 393A(1), except so far as concerns interest for any time after the date on which any corporation tax for the later period became (or, as the case may be, would have become) due and payable, as mentioned in subsection (2) above.

(7B) In any case where—

- (a) a company carrying on a trade incurs a loss in the trade in an accounting period (“the later period),
- (b) as a result of a claim under section 242, the whole or any part of a surplus of franked investment income for an earlier accounting period (the “earlier period) which does not fall wholly within the period of twelve months immediately preceding the later period is treated as there mentioned for the purpose of setting the loss against total profits under section 393A(1), and
- (c) a payment falls to be made of the whole or part of a tax credit comprised in franked investment income received by the company in the earlier period,

then, in determining the amount of interest (if any) payable under this section on the payment referred to in paragraph (c) above, no account shall be taken of any increase in the amount of that payment as a result of the claim under section 242 (to the extent that that section relates to section 393A(1)), except so far as concerns interest for any time after the date on which any corporation tax for the later period became (or, as the case may be, would have become) due and payable, as mentioned in subsection (2) above.”

- 24 In section 843 of that Act (commencement) in subsection (4) (exceptions in the case of certain provisions which include section 394) “394” shall be omitted.
- 25 In Schedule 5 to that Act (treatment of farm animals etc for purposes of Case I of Schedule D) in paragraph 2(3)(a) (election for herd basis to be valid only if made not later than two years after end of the first chargeable period in which relief under section 393(2) given etc) after “393(2)” there shall be inserted “or 393A(1) ”.
- 26 In Schedule 26 to that Act (reliefs against liability for tax in respect of chargeable profits) in paragraph 1(3)(a) (“relevant allowance to include any loss to which section 393(2) applies) for “393(2) there shall be substituted “393A(1) ”.
- 27 (1) In Schedule 30 to that Act (transitional provisions and savings) in paragraph 2 (duration of leases) in sub-paragraph (2)(a) (section 38 deemed to have effect as from passing of ^{M2}Finance Act 1963 in respect of relief under section 385 or 393) after “393” there shall be inserted the words “or 393A(1) ”.
- (2) In paragraph 3 of that Schedule (duration of leases) in sub-paragraph (1)(b) (sections 24 and 38 to have effect subject to modifications except to extent that section 38 relates to relief under section 385 or 393) after “393” there shall be inserted the words “or 393A(1) ”.

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Marginal Citations

M2 1963 c. 25.

The Capital Allowances Act 1990 (c. 1)

- 28 In section 17 of the Capital Allowances Act 1990 (mining structures etc: balancing allowances carried back to earlier chargeable periods) in subsection (2) (where on company ceasing to carry on trade a claim is made under that section and section 394 then allowance for which claim is made is to be disregarded for purposes of claim under section 394 etc) for the words “section 394 of the principal Act (relief for terminal loss) there shall be substituted the words “section 393A(1) of the principal Act (relief for company trading losses) ”.

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