



Finance (No. 2) Act 1997

1997 CHAPTER 58

PART III

INCOME TAX AND CORPORATION TAX

Relief for losses etc

39 Carry-back of trading losses

- (1) Section 393A of the Taxes Act 1988 (set-off of trading losses against profits of previous three years) shall be amended in accordance with subsections (2) to (6) below.
- (2) In subsection (2) (three year carry-back period), for “is the period of three years” there shall be substituted “is (subject to subsection (2A) below) the period of twelve months”.
- (3) After that subsection there shall be inserted the following subsections—
 - “(2A) This section shall have effect in relation to any loss to which this subsection applies as if, in subsection (2) above, the words “three years” were substituted for the words “twelve months”.
 - (2B) Where a company ceases to carry on a trade at any time, subsection (2A) above applies to the following—
 - (a) the whole of any loss incurred in that trade by that company in an accounting period beginning twelve months or less before that time; and
 - (b) the part of any loss incurred in that trade by that company in an accounting period ending, but not beginning, in that twelve months which is proportionate to the part of that accounting period falling within those twelve months.
 - (2C) Where—
 - (a) a loss is incurred by a company in a ring fence trade carried on by that company, and

Status: This is the original version (as it was originally enacted).

- (b) the accounting period in which the loss is incurred is an accounting period for which an allowance under section 62A of the 1990 Act (demolition costs relating to offshore machinery or plant) is made to that company,
subsubsection (2A) above applies to so much of the amount of that loss not falling within subsubsection (2B) above as does not exceed the amount of that allowance.”
- (4) In subsubsection (7) (application of section 393(9))—
 - (a) at the beginning there shall be inserted “Subject to subsubsection (7A) below,”; and
 - (b) for “the accounting period in which the cessation occurs” there shall be substituted “an accounting period ending with the cessation, or ending at any time in the twelve months immediately preceding the cessation,”.
- (5) After that subsubsection there shall be inserted the following subsubsection—

“(7A) For the purposes of this section where—

 - (a) subsubsection (7) above has effect for computing the loss for any accounting period, and
 - (b) that accounting period is one beginning before the beginning of the twelve months mentioned in that subsubsection,
the part of that loss that is not the part falling within subsubsection (2B)(b) above shall be treated as reduced (without any corresponding increase in the part of the loss that does fall within subsubsection (2B)(b) above) by an amount equal to so much of the aggregate of the charges on income treated as expenses by virtue of subsubsection (7) above as is proportionate to the part of the accounting period that does not fall within those twelve months.”
- (6) After subsubsection (11) there shall be inserted the following subsubsection—

“(12) In this section “ring fence trade” has the same meaning as in section 62A of the 1990 Act.”
- (7) In section 343 of that Act (company reconstructions without a change of ownership), the following subsubsection shall be inserted after subsubsection (4)—

“(4A) Subsubsection (2A) of section 393A shall not apply to any loss which (but for this subsubsection) would fall within subsubsection (2B) of that section by virtue of the predecessor’s ceasing to carry on the trade, and subsubsection (7) of that section shall not apply for the computation of any such loss.”
- (8) Subject to subsubsection (9) below, this section applies to any loss incurred in an accounting period ending on or after 2nd July 1997.
- (9) Where a loss in any trade is incurred by a company in an accounting period ending on or after 2nd July 1997 but beginning before that date, section 393A of the Taxes Act 1988 shall have effect as if subsubsection (2A) of that section applied to the pre-commencement part of any amount of that loss to which that subsubsection would not apply apart from this subsubsection.
- (10) In subsubsection (9) above “the pre-commencement part”, in relation to the amount of the whole or any part of a loss in an accounting period, means the part of that amount which, on an apportionment in accordance with subsubsection (11) or, as the case may

be, (12) below, is attributable to the part of that accounting period falling before 2nd July 1997.

- (11) Except in a case where subsection (12) below applies, an apportionment for the purposes of subsection (10) above shall be made on a time basis according to the respective lengths of the part of the accounting period falling before 2nd July 1997 and the remainder of that accounting period.
- (12) Where the circumstances of a particular case are such that the making of an apportionment on the time basis mentioned in subsection (11) above would work in a manner that would be unjust or unreasonable in relation to any person, the apportionment shall be made instead (to the extent only that is necessary in order to avoid injustice and unreasonableness) in such other manner as may be just and reasonable.