



Income Tax Act 2007

2007 CHAPTER 3

PART 4

LOSS RELIEF

CHAPTER 2

TRADE LOSSES

Restriction on relief for “hobby” farming or market gardening

67 Restriction on relief in case of farming or market gardening

- (1) This section applies if a loss is made in a trade of farming or market gardening in a tax year (“the current tax year”).
- (2) Trade loss relief against general income is not available for the loss if a loss, calculated without regard to capital allowances, was made in the trade in each of the previous 5 tax years (see section 70).
- (3) This section does not prevent relief for the loss from being given 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 68), or
 - (c) the trade was started, or treated as started, at any time within the 5 tax years before the current tax year (see section 69 below, as well as section 17 of ITTOIA 2005).

Modifications etc. (not altering text)

C1 Ss. 66-70 applied (21.7.2009) by [Finance Act 2009 \(c. 10\)](#), [Sch. 6 para. 1\(11\)\(a\)](#)

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C2 Ss. 66-70 applied (10.6.2021) by [Finance Act 2021 \(c. 26\)](#), [Sch. 2 para. 3\(1\)\(a\)](#)

68 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 67.
- (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 current tax year would reasonably expect future profits (see subsection (4)), but
 - (b) a competent person carrying on the activities at the beginning 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 tax year.
- (4) In determining whether a competent person carrying on the activities in the current tax 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 tax year.
- (5) “The prior period of loss” means—
 - (a) the 5 tax years before the current tax year, or
 - (b) if losses in the trade, calculated without regard to capital allowances, were also made in successive tax years before those 5 tax years (see section 70), the period comprising both the successive tax years and the 5 tax years.

Modifications etc. (not altering text)

- C1** Ss. 66-70 applied (21.7.2009) by [Finance Act 2009 \(c. 10\)](#), [Sch. 6 para. 1\(11\)\(a\)](#)
C2 Ss. 66-70 applied (10.6.2021) by [Finance Act 2021 \(c. 26\)](#), [Sch. 2 para. 3\(1\)\(a\)](#)

69 Whether trade is the same trade

- (1) This section applies for the purposes of sections 67 and 68.
- (2) If 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—
 - (a) the trade is treated as permanently ceasing to be carried on, and
 - (b) a new trade is treated as starting to be carried on, at the date of the change (but see subsections (3) to (6)).
- (3) A husband and wife are treated as the same person.
- (4) Persons who are civil partners of each other are treated as the same person.
- (5) A husband or wife is treated as the same person as—
 - (a) a company of which either one of them has control, or
 - (b) a company of which both have control.

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- (6) A person'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.
- (7) “Control” ^{F1}is to be read in accordance with sections 450 and 451 of CTA 2010].

Textual Amendments

F1 Words in s. 69(7) substituted (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\)](#), s. 1184(1), [Sch. 1 para. 495](#) (with [Sch. 2](#))

Modifications etc. (not altering text)

C1 Ss. 66-70 applied (21.7.2009) by [Finance Act 2009 \(c. 10\)](#), [Sch. 6 para. 1\(11\)\(a\)](#)
C2 Ss. 66-70 applied (10.6.2021) by [Finance Act 2021 \(c. 26\)](#), [Sch. 2 para. 3\(1\)\(a\)](#)

70 Determining losses in previous tax years

- (1) This section applies for the purposes of sections 67(2) and 68(5) in determining whether a loss, calculated without regard to capital allowances, is made in the trade in any tax year before the current tax year.
- (2) The loss made in a tax year before the current tax year is not taken to be the loss (if any) made in the basis period for the tax year, but is instead the loss made in the tax year itself.
- (3) This loss is determined by reference to—
- (a) the profits or losses of periods of account of the trade (calculated for income tax purposes, but without regard to capital allowances), or
 - (b) if (as a result of section 69) a person claiming the relief is treated as the same person as a company within the charge to corporation tax, the profits or losses of the company's accounting periods (calculated for corporation tax purposes, but without regard to capital allowances),
- or by reference to both.

- (4) If—
- (a) a period of account does not coincide with a tax year, or
 - (b) an accounting period does not coincide with a tax year,
- any of the steps in section 203(2) of ITTOIA 2005 may be taken to arrive at the profits or losses made in a tax year.

For this purpose references in section 203(2) of that Act to basis periods are read as references to tax years and references to periods of account are read as including accounting periods.

- (5) The steps must be taken in accordance with section 203(3) or (4) of ITTOIA 2005.
- (6) 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 that Act.

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Modifications etc. (not altering text)

- C1** Ss. 66-70 applied (21.7.2009) by [Finance Act 2009 \(c. 10\)](#), [Sch. 6 para. 1\(1\)\(a\)](#)
- C2** [Ss. 66-70](#) applied (10.6.2021) by [Finance Act 2021 \(c. 26\)](#), [Sch. 2 para. 3\(1\)\(a\)](#)
- C3** S. 70(2)(3)(a)(4)(a)(5) applied (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\)](#), [ss. 51\(4\)](#), 1184(1) (with Sch. 2)

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Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 24B inserted by [2023 c. 30 Sch. 2 para. 10\(3\)](#)
- s. 788(7) inserted by [2007 c. 29 Sch. 21 para. 161\(b\)](#) (The amending provision was repealed before coming into force.)