# Notes for Guidance - Taxes Consolidation Act 1997

## Finance Act 2023 edition

## Part 12

## Principal Provisions Relating to Loss Relief, Treatment of Certain Losses and Capital Allowances, and Group Relief

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**Notes for Guidance - Taxes Consolidation Act 1997**
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# PART 12
# PRINCIPAL PROVISIONS RELATING TO LOSS RELIEF, TREATMENT OF CERTAIN LOSSES AND CAPITAL ALLOWANCES, AND GROUP RELIEF

## CHAPTER 1
*Income tax: loss relief*

### Overview

This Chapter contains the provisions affording income tax loss relief. The loss reliefs provided are —

- current year relief for losses sustained in a trade, profession or employment against all profits/gains (***section 381***). ***Section 381A*** (inserted by section 18 of the Finance Act 2013) modifies and limits the use of ***section 381*** in certain circumstances,
- carry forward of unutilised trading or professional losses against future profits/gains of the same trade or profession (***section 382***),
- current year relief for "Case IV" losses against other "Case IV" income and carry-forward of unutilised relief against future "Case IV" income (***section 383***),
- carry forward of the excess of the deficiencies over the surpluses from rental income against future "Case V" income (***section 384***),
- terminal loss relief on the discontinuance of a trade or profession (***sections 385 to 389***).

In addition, certain payments assessed to tax under ***section 238*** are treated as a loss arising in a trade or profession where the payments are incurred wholly and exclusively for the purposes of the trade or profession (***section 390***).

The availability of loss relief is restricted in the case of certain trades and activities. This may involve allowing the loss to be offset only against income arising to the person from the same trade or activity. The restriction can also apply where the losses are created or increased by the use of capital allowances (see ***Chapter 2*** of this Part). This type of restriction of relief is known as "ring-fencing". The most important such provisions are —

- ***section 403*** (restriction on use of capital allowances for certain leased assets),
- ***section 404*** (restriction on use of capital allowances for certain leased machinery or plant),
- ***section 405*** (restriction on use of capital allowances on holiday cottages),
- ***section 687*** (treatment of losses arising in a petroleum trade),
- ***section 753*** (restriction on relief for losses in case of dividends paid out of accumulated profits).

Special provisions also apply on the way losses may be used where they arise in a trade of farming (***sections 661*** and ***662***).

### 381 Right to repayment of tax by reference to losses

#### Summary

Any person who, either solely or in partnership, sustains a loss in any year of assessment in the carrying on of a trade, profession (including vocation) or employment is entitled to relief in respect of that loss. The amount of the loss is to be calculated in the same way that a profit would be calculated for the activity in question. The relief, which must be claimed, is granted by making a recalculation of the taxpayer's income tax liability for the year by reference to a revised total income figure which is arrived at by the deduction of the amount of the loss from the person's income for the year. To the extent that this recalculation shows that an overpayment was made the excess tax is repaid (without interest). The need to seek a repayment may be avoided if the claim for relief under this section is made before the final assessment for the year is made (for instance, the claim could be submitted along with the self assessment return under ***Part 41A***.

Strictly, loss relief under this section is to be calculated by reference to the year of assessment in which the loss arises. However, in practice, the relief is in certain circumstances (that is, in the case of a continuing business) given by reference to a loss sustained in the 12 month accounting period ending in the year of assessment for which the claim is made. However, it is open to the taxpayer to insist on the application of the statutory basis. The strict statutory basis for the relief is, however, applied in certain commencement, cessation and other cases.

By virtue of ***section 392*** a taxpayer may opt to use capital allowances to create or augment a loss qualifying for relief under this section. Where this happens, relief is granted in respect of an actual loss sustained in a trade, etc before giving effect to any capital allowances which may be so utilised. ***Section 381A*** (inserted by section 18 of the Finance Act 2013) provides for a restriction of loss relief in certain cases where the loss is sustained in carrying on a “specified trade”.

## Details

### *Loss relief*

Any person sustaining a loss in a year of assessment in the carrying on, either solely or in partnership, of any trade, profession (including vocation) or employment is entitled to relief in respect of that loss. Relief for any such loss is granted to a taxpayer by deducting the amount of the loss from the taxpayer’s income from all sources for the year in question (that is, the deduction is to be made in arriving at total income). Where this recalculation reveals an overpayment of income tax, the excess tax is repaid (without interest). It is necessary to make a claim for this relief. ***Section 381A*** provides for a restriction of loss relief in certain cases where the loss is sustained in carrying on a “specified trade”, ***section 381B*** provides for the restriction of loss relief for passive traders and ***section 381C*** provides for the restriction of loss relief that results from a tax avoidance arrangement. ***(1)***

### *Exclusion*

Loss relief is not available in respect of a loss sustained by the owner or part owner of a stallion from the sale of services of mares by the stallion or from the sole rights to such services. ***(2)***

However, after the 31 July 2008 when income from stallion stud fees becomes fully taxable, the exclusion referred to in ***subsection (2)*** will no longer apply. Losses incurred in a chargeable period which straddles 31 July 2008 will have loss relief limited on a time apportionment basis. ***(2A)***

### *Order of relief*

Where loss relief is claimed, the following is the order in which the loss is set against the taxpayer’s income — ***(3)***

- firstly, against the income of the individual which is of the same class (corresponding class) as the type of income which would have arisen from the business in which the loss is sustained had a profit rather than a loss been made,
- secondly, against the other income of the individual,
- thirdly, against income of the individual’s spouse or civil partner which is of the corresponding class, and
- finally, against other income of the spouse or civil partner.

Normally, income of the corresponding class will be earned income and, accordingly, the loss will be set off in the order of (i) own earned income, (ii) own unearned income, (iii) spouse's/civil partner's earned income, and (iv) spouse's/civil partner's unearned income. Unearned income can be income of the corresponding class where the loss arises in a business where, for instance, the claimant is a sleeping partner. In such a case the order of set-off is (i) own unearned income, (ii) own earned income, (iii) spouse's/civil partner's unearned income, and (iv) spouse's/civil partner's earned income.

In the case of a body corporate liable to income tax, loss relief is calculated on the basis of a recomputation of the income tax which would have been payable if the profits/gains of the trade in which the loss was sustained had been reduced by the amount of the loss. The balance of any relief available is then to be set off against other income of the body corporate.

***Computation of losses***

Losses are computed in the same way that profits would be for the activity in question. ***(4)***

***Bar on double relief***

Loss which is treated as reducing income of a given tax year is not to be taken into account in computing an assessment for a subsequent year. ***(5)(a)***

Losses treated as reducing income for the purposes of relief under this section are treated as reducing the person's income for the other purposes of the Income Tax Acts. This ensures that the same amount is not taken into account for the purposes of relief under this section and under some other provision of the Income Tax Acts in the same tax year. ***(5)(b)***

***Claims and appeals***

A claim must be made to the inspector on the prescribed form within 2 years of the end of the year of assessment in which the loss is sustained. The claim is determined by the inspector.

A person who is not satisfied with the determination of the inspector may appeal the determination by notice in writing to the Appeal Commissioners. An appeal must be made within 30 days of the date of the notice of the determination. The Appeal Commissioners will hear and determine an appeal in the manner provided for in ***Part 40A***.

## 381A Restriction of loss relief in certain cases

### Summary

This section (inserted by section 18 of the Finance Act 2013) modifies and limits the use of ***section 381*** in certain circumstances. The summary details are as follows:

- It applies to an individual in any particular year, if less than 50 per cent of his/her total income (for USC purposes) for that year and the 2 previous years derives from dealing in or developing land.
- It applies as respects losses created by trading deductions on foot of interest payable on loans taken out to acquire land held as trading stock as well as deductions attributable to any write-down of the value of such land in an individual's accounts.
- Loss relief, under ***section 381***, may not be claimed in respect of any such losses in the future, unless the interest in question has actually been paid or the decline in land value has actually been realised by way of a disposal prior to the claim being made.
- The normal deductibility of the interest expense or the write-down in land value in the trading accounts is unaffected by these new measures.
- In order to effect the proper functioning of this new section, provision is made to set an order in respect of which deductions and payments are deemed to be made.

- This provision applies to any interest expense incurred or any write-down in land value, which takes place on or after 13 February 2013.

### Details

“aggregate income for the tax year” has the same meaning as in ***section 531AL*** i.e. income for the purposes of universal social charge. ***(1)***

“specified loss”, in relation to a tax year and a specified trade, means any loss or part of a loss:

- which relates to interest on debt incurred to finance the purchase or development of land held as trading stock, and/or
- which relates to the write-down in value of such land.

“specified trade” means a trade of dealing in or developing land or any activity, which is treated as such by virtue of ***section 640(2)(a)***, to which the rules contained in ***Chapter 1*** of ***Part 22*** apply.

“specified trader” in relation to any particular tax year means an individual whose income from the specified trade for that tax year and the preceding two tax years is less than half the individual’s aggregate income for the same period.

A refund of tax arising from a claim for relief under ***section 381*** which relates to a specified loss will not be made: ***(2)***

- where the loss has arisen as a result of a deduction for interest which has not been paid prior to the claim being made, and/or
- where the loss has arisen due to the write-down of the value of land held as trading stock where there has been no disposal of the land prior to the claim being made.

Where a loss is realised by virtue of a disposal of land held as trading stock to a connected person, no loss relief will be available under ***section 381.*** ***(3)***

Interest, which has been paid, will be treated as paid in respect of an earlier year in priority to a later year for the purposes of arriving at the amount of a specified loss in a particular tax year. ***(4)***

***Subsection (5)*** provides that for the purposes of determining the amount of a specified loss in a particular tax year a deduction for interest is allowed after all other deductions and a deduction for the write-down of the value of land is allowed immediately prior to the deduction for interest. ***(5)***

## 381B Restriction of loss relief – passive trades

### Summary

This section (inserted by 11 of the Finance Act 2014) modifies and limits the use of ***section 381*** in circumstances where an individual carries on a trade in a non-active capacity. Any losses which are not available for relief under ***section 381*** pursuant to the operation of this section are available for carry forward under ***section 382***.

### Details

“Relevant loss” means a trading or professional loss, including any amount of current year capital allowances which by virtue of ***section 392*** are available for relief under ***section 381***, other than a loss which relates to: ***(1)(a)***

- a farming or market gardening loss (they have an equivalent restriction under ***section 662***),
- a loss generated from specified property reliefs to which the USC property relief surcharge applies (they have an equivalent restriction under ***section 409 – 409E***),

- a loss treated as a trading loss (e.g. from Lloyds business or expenditure on significant buildings under ***section 482***).

For the purposes of ***section 381B***, an individual carries on a trade in a non-active capacity during a period if, during that period, that individual does not work for the greater part of his or her time on the day to day management or conduct of the trade / profession. ***(1)(b)***

A person cannot be said to work for the greater part of his or her time on the day to day management or conduct of the trade or profession during a period unless:

- on average, during the period, the individual spends 10 hours a week
- personally engaged in the activities of the trade or profession and
- those activities are carried on on a commercial basis
- in such a way that profits of the trade or profession could reasonably be expected to be made in the period or within a reasonable time there after.

A person who does not meet the test set out in ***(1)(b)*** is a passive trader. A passive trader who wishes to claim ***section 381*** relief in a year of assessment is subject to a cap on the maximum amount of relief that can be claimed. That cap is, in most instances, €31,750 per year. This is regardless of the number of passive trades that the individual carries on. ***(2)(a) & (c)***

If a passive trader was carrying on the trade for a period which is shorter than 12 months (e.g. in a start up or cessation period), then the cap is reduced proportionately. ***(2)(b)***

## 381C Restriction of loss relief – anti-avoidance

### Summary

This section (inserted by 11 of the Finance Act 2014) modifies and limits the use of ***section 381*** in circumstances where an individual wishes to claims relief under ***section 381*** for a loss which was artificially created for the purposes of making a ***section 381*** claim. Any losses which are not available for relief under ***section 381*** pursuant to the operation of this section are available for carry forward under ***section 382***.

### Details

"Arrangements" means any agreement, understanding, scheme, transaction or series of transactions, whether or not they are legally enforceable. ***(1)(a)***

"Relevant loss" means a trading or professional loss, including any amount of current year capital allowances which by virtue of ***section 392*** are available for relief under ***section 381***, other than a loss which relates to:

- a loss generated from specified property reliefs to which the USC property relief surcharge applies (both of these can generate losses through the use of an incentive in the tax code in a manner which was intended by the *Oireachtas*. Therefore claiming such relief should not be restricted).

"Relevant period for a year of assessment" means, in most cases, the basis period for that year of assessment. However, in circumstances where that basis period is shorter than 6 months (because of the operation of the commencement, cessation or change in accounting date rules) then a period of 6 months must be looked at. In the case of cessations, the 6 months is the 6 months up to the date of cessation. In all other cases it is a 6 month period starting with the first day of the basis period.

"Relevant tax avoidance arrangements" means arrangements the main purpose, or one of the main purposes of which, was to give rise to a claim under ***section 381***.

For the purposes of section 381C, an individual carries on a trade in a non-active capacity during a relevant period for a year of assessment if, during that period, that individual does ***(1)(b)*** not work for the greater part of his or her time on the day to day management or conduct of the trade / profession.

A person cannot be said to work for the greater part of his or her time on the day to day management or conduct of the trade or profession during a period unless:

- on average, during the period, the individual spends 10 hours a week
- personally engaged in the activities of the trade or profession and
- those activities are carried on on a commercial basis
- in such a way that profits of the trade or profession could reasonably be expected to be made in the period or within a reasonable time there after.

A person who *(2)*

- does not meet the test set out in (1)(b) and
- sustains a relevant loss for the year of assessment and
- that loss arises from tax avoidance arrangements, in whole or in part, directly or indirectly

then, no relief is available for that loss under ***section 381***.

## 382 Right to carry forward losses to future years

### Summary

This section allows a person who has sustained a loss in a trade or profession (including a vocation) in a year of assessment to carry forward that loss and set it against taxable profits of the same trade or profession assessable for a subsequent year of assessment. No such right of carry-forward applies where the person has obtained relief for the loss under any other provision.

### Details

#### *Loss relief*

Where in any year of assessment a person sustains a loss in a transaction (whether the transaction was engaged in by the person either solely or in partnership) which if a profit had arisen from it would have been chargeable under Case IV of Schedule D, the person may claim relief for the loss. The relief takes the form of a set-off against any Case IV assessment made on the person for the year of assessment in which the loss is incurred. Any part of the loss which cannot be relieved by such a set-off may be carried forward for setting against a Case IV assessment in a subsequent year. *(1)*

#### *Partnerships*

Where a "Case IV" loss is sustained by a partnership, the loss to be set against the other Case IV income of the year of loss or carried forward to a subsequent year is the individual partner's loss and not the partnership's loss as a whole. In other words, a "Case IV" loss made by a partner in a firm is treated as an individual loss and can only be set against or carried forward against that partner's own share of the firm's other or future "Case IV" income. If the partner leaves the firm, his/her losses cannot be utilised by set-off or carry-forward against the other or future "Case IV" income of the remaining partners. *(2)*

#### *Order of relief*

Any relief given by way of carry-forward is to be given, as far as possible, from the Case IV assessment for the year immediately following the year in which the loss arises. Any balance of relief is given from the next such assessment and so on. *(3)*

## 383 Relief under Case IV for losses

## Summary

This section provides relief by way of set-off in the current year or carry-forward to a subsequent year for losses incurred in transactions which if a profit had arisen would have been chargeable under Case IV of Schedule D. The losses may only be set off, or carried forward for set-off, against other Case IV income.

## Details

### *Loss relief*

Where in any year of assessment a person sustains a loss in a transaction (whether the transaction was engaged in by the person either solely or in partnership) which if a profit had arisen from it would have been chargeable under Case IV of Schedule D, the person may claim relief for the loss. The relief takes the form of a set-off against any Case IV assessment made on the person for the year of assessment in which the loss is incurred. Any part of the loss which cannot be relieved by such a set-off may be carried forward for setting against a Case IV assessment in a subsequent year. ***(1)***

### *Partnerships*

Where a "Case IV" loss is sustained by a partnership, the loss to be set against the other Case IV income of the year of loss or carried forward to a subsequent year is the individual partner's loss and not the partnership's loss as a whole. In other words, a "Case IV" loss made by a partner in a firm is treated as an individual loss and can only be set against or carried forward against that partner's own share of the firm's other or future "Case IV" income. If the partner leaves the firm, his/her losses cannot be utilised by set-off or carry-forward against the other or future "Case IV" income of the remaining partners. ***(2)***

### *Order of relief*

Any relief given by way of carry-forward is to be given, as far as possible, from the Case IV assessment for the year immediately following the year in which the loss arises. Any balance of relief is given from the next such assessment and so on. ***(3)***

# 384 Relief under Case V for losses

## Summary

This section provides for the carry forward of any unrelieved rental losses sustained in a year of assessment for set-off against Case V income arising in a subsequent year of assessment. Capital allowances arising in a particular year that are attributable to rental property must be used in priority to rental income losses being brought forward from earlier years. ***Section 75(4)*** ensures that any losses sustained from the uneconomic letting of any premises are excluded from relief under this section.

## Details

### *Loss relief*

Where in any year of assessment the sum of the deficiencies arising to any person from each rent or from the total receipts from easements exceed the total of the surpluses so arising, the excess may be carried forward and set against the person's Case V income for a subsequent year. Any income tax overpaid is to be repaid. The deficiencies and surpluses referred to are to be computed in accordance with the Case V computational rules contained in ***section 97***. ***(1) & (2)***

***Adjustment of losses on clawback of section 23-type relief***

Where a clawback of section 23-type relief occurs, the amount of any deficiencies which are carried forward into that year is then reduced by an amount equal to B in the formula in ***section 372AP(7)***. This is because the deemed amount of income in that year has already been reduced by that amount and without this reduction, that amount could be deducted twice. ***(2A)***

***Order of relief***

Subject to ***subsection (4)***, the relief given by the section is to be given, as far as possible, from the Case V assessment for the year immediately following the year in which the Case V loss arises. Any balance of relief is given from the next such assessment and so on. ***(3)***

Current year capital allowances that are made in charging income under Case V as provided for in ***section 305*** must be used in priority to relief under this section for unused Case V losses from earlier years. ***(4)***

## 385 Terminal loss

### Summary

This section, together with ***sections 386*** to ***389***, provides relief in respect of a loss incurred in the final year of a discontinued trade or profession. Broadly, the relief provides that such a loss (referred to as a "terminal loss"), in so far as it has not otherwise been relieved, may be carried back and set against the assessments on the same trade or profession for the 3 years of assessment preceding the year in which the discontinuance occurs. The relief must be claimed by the person who was carrying on the trade or profession, either alone or in partnership, at the time of the discontinuance.

This section is the substantive provision granting the actual relief. ***Section 386*** is concerned with the determination of the amount of the terminal loss which may be relieved. ***Section 387*** is concerned with determining the amount of the profits/gains of the trade or profession against which the terminal loss may be carried back. The meaning of the term "permanently discontinued" for the purposes of the relief is provided for by ***section 388***, while ***section 389*** is concerned with the determination of claims for the relief.

### Details

***The relief***

The relief applies to a person who has sustained a terminal loss (as determined by ***section 386***) in a trade or profession (including a vocation) which has been permanently discontinued. The relief only applies where, immediately before the discontinuance, the trade, etc was carried on by the person either as a sole trader or as a partner in a partnership. Subject to the provisions of this section and of ***sections 387*** to ***389***, a person claiming terminal loss relief may have the terminal loss set off against the profits/gains of the trade or profession on which the person has been assessed to tax for the 3 years of assessment preceding the year of assessment in which the discontinuance occurs. All necessary amendments of assessments and repayments of tax which are necessary to give effect to the claim may be made. No special time limit for the making of claims or granting of relief is laid down. Thus, where repayment of income tax is involved, the 4 year limit under ***section 865*** applies. ***(1)***

***Bar on double relief***

Duplication of relief under this section and any other provision of the Income Tax Acts is prohibited. ***(2)***

***Order of relief***

The relief is given as far as possible from the assessment for a later rather than an earlier year of assessment. The terminal loss, therefore, is to be set, in the first instance, against the profits, if any, of the penultimate year of assessment and so on. ***(3)***

## 386 Determination of terminal loss

### Summary

This section provides for the method of calculation of the amount of the terminal loss available for relief.

### Details

***Computation of capital allowances and losses***

The term "the relevant capital allowances" means the capital allowances, exclusive of allowances brought forward from an earlier year, to be made in charging the profits/gains of the trade or profession for a year of assessment. ***(1)***

In the computation of —

- the loss (if any) sustained by the person in the year of assessment the trade or profession is permanently discontinued, and
- the loss (if any) sustained in the part of the preceding year of assessment beginning 12 months before the trade or profession is permanently discontinued,

losses are to be computed in the same way as profits would be for the purposes of Cases I and II of Schedule D.

***Calculation of amount of terminal loss***

The amount of the terminal loss consists of the sum of 4 elements in so far as they arise. These amounts are only included in so far as relief has not already been given in respect of any of them under some other provision. The amounts are — ***(2)***

- the loss sustained in the year of assessment in which the trade or profession is permanently discontinued;
- the relevant capital allowances for that year;
- the loss sustained in the part of the penultimate year of assessment beginning 12 months before the date of discontinuance;
- the proportion (on a time basis) of the relevant capital allowances for the penultimate year of assessment appropriate to the part of that year beginning 12 months before the date of discontinuance.

## 387 Calculation of amount of profits or gains for purposes of terminal loss

### Summary

This section is concerned with the calculation of the amount of the profits/gains of the trade or profession on which the claimant has been charged to tax for a particular year and against which the terminal loss may be carried back and set against.

### Details

The starting point is to take the full amount of the profits/gains of the trade or profession on which the claimant was assessable for a year of assessment (that is, the gross profit of the basis year or period for that year). From this amount is deducted — ***(1)***

- capital allowances (including amounts carried forward from an earlier year) made in charging those profits/gains for the year concerned,
- deductions (allowed against the profits/gains assessed) in respect of losses,
- deductions allowed in computing total income for the year concerned in respect of payments made out of the profits/gains assessed, and
- in the case of a body of persons, dividends paid out of profits/gains of the trade or profession (this is, in general, not relevant).

In effect, the profits/gains on which a person has been charged to tax are those on which he/she would have ultimately borne tax were that person not entitled to any personal allowances or reliefs.

The deductions allowable in computing total income which may be treated as made from trading/professional profits or from other income are to be treated as having been made primarily from the other income. The effect of this is that such items as interest deductible under ***section 248*** or ***253*** or charges on income (for example, annuities or other annual payments) are to be deducted first from non-trading/professional income. However, items such as a ***section 381*** loss (where it is deductible first from earned income), a trading loss carried forward under ***section 382*** or a retirement annuities premium in respect of income from a trade or profession under ***section 784*** are deducted primarily or only from the trading profits.

Where an annual payment or other payment treated as a charge is not made for trade/profession purposes, the amount of the terminal loss qualifying for relief for earlier years is to be reduced by the amount of the payment so made. The relief available for the earlier years is accordingly limited to what it would have been if the terminal loss had been set against the trading profits of the later years before deducting the payment. ***(2)***

## 388 Meaning of "permanently discontinued" for the purposes of terminal loss

This section defines what is meant by "permanently discontinued" for the purposes of terminal loss relief. Where a trade or profession is treated as permanently discontinued and a new one set up for the purposes of ***section 69*** or where the several trade of a partner is treated as having been discontinued, a claim for terminal loss relief may arise.

However, where a partial change of ownership is treated as a discontinuance, a person who continues to carry on the trade or profession (either solely or in partnership) after the change is not to get terminal loss relief.

Where a person who on a partial change of ownership treated as a discontinuance ceases to be engaged in the carrying on of the "new" trade or profession, that person is entitled to have his/her share of a terminal loss in the "new" trade or profession set against profits of the "old" trade or profession on which he/she has been charged to tax for a period before the previous discontinuance. Where the previous discontinuance occurred within 12 months of the discontinuance giving rise to the claim, the previous discontinuance is ignored in computing the amount of the terminal loss.

## 389 Determination of claim for terminal loss

A claim for terminal loss relief shall be made to and determined by an inspector.

A person who is not satisfied with the determination of the inspector may appeal the determination by notice in writing to the Appeal Commissioners. An appeal must be made within 30 days of the date of the notice of the determination. The Appeal Commissioners will hear and determine an appeal in the manner provided for in ***Part 40A***.

## 390 Amount of assessment under section 238 to be allowed as a loss for certain purposes

### Summary

Where an assessment under ***section 238*** is made in respect of certain payments on a person carrying on a trade or profession, the amount of the assessment may, in certain circumstances, be treated as a loss sustained in that trade or profession for the purposes of ***sections 382*** and ***385*** to ***389***.

### Details

This section applies to a person who has been assessed under ***section 238*** for a year of assessment in respect of a payment made wholly and exclusively for the purposes of the trade or profession carried on by that person. Where the section applies, the amount of the assessment is treated as a loss sustained in the trade or profession concerned and relief in respect of such loss is allowed either by way of carry-forward under ***section 382*** or as a terminal loss under ***section 385***. ***(1) & (3)***

It should be noted that relief is not allowable under this section unless the tax assessed under ***section 238*** on the payment concerned has actually been paid.

Excluded from the relief are payments which the payer does not ultimately bear or which are charged to capital. Also excluded from the relief are payments which are chargeable under ***section 238*** by virtue of certain other provisions. The payments concerned are —

- payments of yearly interest by companies and payments of such interest to non-residents (***section 246(2)***),
- payments of capital sums on the sale of patent rights (***section 757***), and
- rents paid to non-residents (***section 1041(1)***).

Included within the scope of the section are payments made before a trade or profession had been set up and commenced if the section would have applied to those payments had they been made at the time the trade or profession had been actually set up and commenced. This relief for pre-trading payments applies to the exclusion of any other relief which may be available for the payment. This extension of the scope of the relief only applies where the trade or profession is set up and commenced on or after 22 January, 1997. ***(2)***

# CHAPTER 2
*Income tax: loss relief – treatment of capital allowances*

### Overview

This Chapter, in ***section 392***, authorises the deduction of capital allowances in the computation of a loss for the purposes of ***section 381*** (that is, relief for current year losses). In addition to operating to increase the loss, the deduction of the capital allowances may be used to create a loss for the purposes of relief under ***section 381***. Under the Chapter the capital allowances to be considered in computing a loss are those for the year of assessment in which the loss is sustained (***section 391***). The allowances are to be reduced by the amount of any balancing charges required to be made for the year (***section 393***). Claims for the treatment provided by the Chapter are to be included in claims made under ***section 381***.

## 391 Interpretation (Chapter 2)

References to "year of claim" are references to the year of assessment for which a claim for loss relief under ***section 381*** (that is, current year loss relief) is made. ***(1)***

The capital allowances or balancing charges (being balancing charges under ***Part 9*** (Industrial Buildings or Structures, Machinery or Plant, Dredging) or ***Chapter 1*** of ***Part 29*** (Patents)) for a year of assessment which are to be taken into account are those in respect of assets used for the trade in question and attributable to that year. Allowances or charges attributable to other assets and which would not be made in charging the profits/gains of the trade are excluded. Also excluded are capital allowances carried forward from earlier years. ***(1) & (2)(a)***

Where the capital allowances to be made in charging the profits of a trade for a year of assessment include allowances carried forward from an earlier year, any amount of capital allowances actually granted in that year of assessment is to be treated as consisting primarily of the allowances so carried forward. ***(2)(b)***

References to an amount of capital allowances being non-effective in a year of assessment are references to so much of the capital allowances to be made for a year of assessment as cannot be actually made in charging the profits of the trade because the profits chargeable are insufficient. ***(2)I***

The Chapter also applies to the other activities, namely, professions (including vocations) and employments, in which losses eligible for relief under ***section 381*** may arise. ***(3)***

## 392 Option to treat capital allowances as creating or augmenting a loss

Where a claim is made under ***section 381*** for a year of assessment for relief in respect of a trading loss, the claimant may opt in that claim to have an amount equal to the capital allowances for the year of assessment in which the loss is sustained (referred to as "the year of the loss") to be taken into account in arriving at the amount of the loss. In addition to increasing the size of a loss, the deduction of the capital allowances may operate to create a loss for the purposes of "***section 381***" loss relief (that is, where the trade would be in profit if the capital allowances were not taken into account). The quantum of the capital allowances which are to be taken into account for these purposes is determined by ***section 393***. ***(1)***

Where a claimant's income for a year of assessment is insufficient to absorb the whole of the loss arrived at following the deduction of capital allowances, "***section 381***" relief is to be treated as having been given primarily in respect of the loss computed without reference to the capital allowances rather than to the loss computed with reference to the capital allowances. This allows the capital allowances not set off under the claim to be carried forward to the next year of assessment. ***(2)***

## 393 Extent to which capital allowances to be taken into account for purposes of section 392

Capital allowances are to be taken into account for the purpose of creating or augmenting a loss under ***section 392(1)*** only to the extent that they are not required to offset balancing charges (being balancing charges under ***Part 9*** or ***Chapter 1*** of ***Part 29***) for the year of assessment to which they relate. ***(1)***

Only so much of the capital allowances for the year of assessment (as so calculated) as are not absorbed by any assessment for that year may be deducted, under ***section 392(1)***, in the computation of the loss for the purposes of "***section 381***" loss relief. Where, however, there are capital allowances carried forward from an earlier year, these would by virtue of ***section 391(2)(b)*** be allowed against the assessment in priority to the actual capital allowances for the year. This serves to increase the amount of the capital allowances which are available for taking into account in determining a loss under ***section 392(1)***. For example, a "***section 381***" claim is for, say, the year 2002, and for that year there are profits of €20,000 and a balancing charge of €10,000. The capital allowances for the year are €30,000 and allowances of €20,000 are brought forward. The allowances brought forward are treated as covering both the balancing charge and €10,000 of the profits leaving the whole of the capital allowances for the year itself, €30,000, available to create a loss. The loss would be €20,000, namely, profits €10,000 (€20,000 less €10,000) less allowances €30,000.

The amount of the capital allowances which are required to offset balancing charges for this purpose is to be determined by deducting from the full amount on which the balancing charge is made any capital allowances carried forward to the year concerned which, if there were no balancing charge, would be non-effective in that year (that is to say, so much of the capital allowances carried forward to the year as exceeds the profits for that year). The remainder, if any, of the balancing charge is to be treated as absorbing capital allowances for the year itself and so diminishing the amount of allowances to be taken into account in the loss computation for that year. ***(2)***

## 394 Effect of giving relief under section 381 by reference to capital allowances

Capital allowances for a year of assessment in respect of which loss relief is given under ***section 381*** are to be treated as effectively allowed for all tax purposes up to the amount of these allowances in respect of which relief is so given. For example, the profits for 2002 are €10,000 and the capital allowances for that year amount to €18,000. There is no carry forward of capital allowances. A "***section 381***" claim is made for the year 2002 by reference to the option provided for by ***section 392(1)***, creating a loss of €8,000 which is fully relieved under ***section 381***. The balance of the capital allowances not so relieved is €10,000 (€18,000 – €8,000). The Case I assessment for 2002 will therefore be nil (€10,000 less capital allowances €10,000).

Any relief which is given for a subsequent year in respect of capital allowances which are then used to obtain relief under ***section 381*** by virtue of ***section 392(1)*** is to be adjusted by amended assessment. This could arise because of the time limit on the making of a "***section 381***" claim of 2 years from the end of the year of assessment in respect of which the claim is made. If, in the example above, the balance of capital allowances for 2002, namely, €10,000, were carried forward and allowed against the assessment for 2003 and subsequently, but after that assessment had been made, a "***section 381***" claim were made for 2002 by virtue of ***section 392(1)***, the "***section 381***" relief would be given for 2002 and the allowances which had been set against the 2003 assessment would be withdrawn by amended assessment.

## 395 Relief affected by subsequent changes of law, etc

Where the amount of the capital allowances to be taken into account for the purposes of creating or increasing a loss by virtue of ***section 392(1)*** is affected by an alteration of the law or the discontinuance of the trade or other event, any necessary adjustments may be made to ensure that the correct tax is paid, including the recovery of any tax repaid by means of an assessment under Case IV of Schedule D.

# CHAPTER 2A
*Income tax: Covid-19 loss relief*

### Overview

This Chapter provides for a temporary loss relief for individuals carrying on a trade or profession, who incur a loss in the period 1 January to 31 December 2020. It provides that such individuals may make a claim to have those losses carried back and deducted from their profits for the tax year 2019.

It also provides that, subject to certain conditions being satisfied, interim claims for relief may be made in respect of losses under this Chapter and unused capital allowances under ***section 304(3A).***

Finally, it restricts the amount of relief that may be claimed in respect of losses under this Chapter and unused capital allowances under ***section 304(3A).*** Firstly, it provides that the total amount of relief that may be claimed is limited to €25,000 per taxpayer. Secondly, it provides that the amount of relief that can be given to individuals who are subject to the High-Income Earner Restriction under ***section 485C*** is to be calculated after any other relief which they are entitled to claim for the tax year 2019.

## 395A Right to carry-back losses sustained between 1 January 2020 and 31 December 2020

This subsection sets out two key definitions for Chapter 2A. ***(1)***

The "relevant period" is defined as the period 1 January to 31 December 2020.

A "relevant loss" has the meaning given to it in ***subsection (2).***

Where an individual carrying on a trade or profession, either solely or in a partnership, incurs, in the relevant period (i.e. 1 January to 31 December 2020), a loss which could, but for the making of a claim under ***subsection (3),*** be carried forward to the following year or years under ***section 382***, ("relevant loss") the individual may make a claim for relief under ***subsection (3).*** ***(2)***

Subject to ***section 395C***, an individual may make a claim to have any portion of the relevant loss carried back to the year of assessment 2019. Where such a claim is made, the relief shall be given as a deduction from or set-off against the amount of profits on which the individual is assessed under Schedule D in respect of the same trade or profession for the year of assessment 2019. ***(3)***

Where relief for a relevant loss is given to an individual under this section, the individual will not be entitled to relief for that relevant allowance under any other provision of the Income Tax Acts. ***(4)***

Where a relevant loss is carried back under this section, relief will be given for a loss incurred earlier in time before relief is given for a loss incurred later in time. ***(5)***

## 395B Interim claim for carry-back of relevant losses and relevant allowances

This subsection sets out a number of key definitions for the purpose of the section. ***(1)***

The term "the Acts" is given the same meaning as it has in ***section 1095***. ***Section 1095*** defines "the Acts" as: the Customs Acts, the statutes relating to the duties of excise and to the management of those duties, the Tax Acts, Parts 18A, 18B, 18C and 18D of the Taxes Consolidation Act 1997, the Capital Gains Tax Acts, the Value-Added Tax Acts, the Finance (Local Property Tax) Act 2012, the statutes relating to stamp duty and to the management of that duty, the Capital Acquisitions Tax Consolidation Act 2003, and the enactments amending or extending that Act, and any instruments made under any of the aforementioned instruments.

A “basis period” applies to an individual carrying on a trade or profession for any year of assessment and is the period on the profits of which income tax for that year is finally computed under Case I or II of Schedule D in respect of that trade or profession.

The term “estimated relevant allowances” means an amount that, based on the best estimate that may reasonably be made, is likely to equal the amount of the relevant allowances when they are calculated in accordance with ***section 304(3A).***

An “estimated relevant loss” means an amount that, based on the best estimate that can may reasonably be made, is likely to equal the amount of the relevant loss when the amount of that loss is calculated in accordance with ***section 395A***.

An “excess claim” is the amount by which the amount of tax repaid to the individual for the year of assessment 2019 computed in accordance with an interim claim exceeds the amount of tax that would have been repaid to the individual for the year of assessment 2019 if that repayment had been computed in accordance with a true and correct final claim;

A “final claim” has the meaning given to it in ***subsection (4)(c).***

An “interim claim” has the meaning given to it in ***subsection (2).***

The term “relevant allowances” has the same meaning as it has in ***section 304(3A).***

A “relevant individual” means an individual carrying on a trade or profession who is of the opinion that it is probable that a relevant loss and/or relevant allowances will arise in the trade or profession.

A “return” has the same meaning as it has in ***section 959A***. In ***section 959A***, “return” means the return which is required to be prepared and delivered in accordance with Chapter 3 of Part 41A. Part 41A sets out the assessing rules including rules for self-assessment and Chapter 3 deals specifically with the making of returns by chargeable persons.

The “specified return date for the tax year” has the same meaning as it has in ***section 959A*** and means in relation to a tax year for income tax or capital gains tax purposes, 31 October in the tax year following that year.

A “tax compliant individual” means an individual who has complied with all of the obligations imposed on the individual by the Acts in relation to the payment or remittances of taxes, interest or penalties required to be paid or remitted and the delivery of returns.

The term “tax repaid” means any amount of tax that has been repaid to the individual by Revenue in respect of an excess claim or any amount of tax that would have been repaid to the individual by Revenue but for the offset of that tax against any other liability of the individual.

This subsection provides that, subject to ***subsections (3) and (4)***, a relevant individual may make a provisional claim for relief in respect of an estimated relevant loss or estimated relevant allowances. This is referred to as an “interim claim”. Where the interim claim is in relation to an estimated relevant loss, the relief will be claimed in the same way as a claim would be made for relief in respect of a relevant loss under ***section 395A***. Where the interim claim is in relation to estimated relevant allowances, the relief will be claimed in the same way as a claim would be made for relief in respect of relevant allowances under ***section 304(3A)***. ***(2)***

This subsection sets out certain conditions that must be met before an interim claim may be made under ***subsection (2).*** ***(3)***

Where the interim claim relates to a relevant loss sustained or relevant allowances to be claimed in the year of assessment 2020, the interim claim may not be made after 31 May 2021. ***(3)(a)(i)***

Where the interim claim relates to a relevant loss sustained or relevant allowances to be claimed in the year of assessment 2021, the interim claim may not be made either before the first four months of the basis period for the year of assessment 2021 have elapsed or after 31 May 2022. ***(3)(a)(ii)***

Immediately before the claim is made, the relevant individual must be a tax compliant individual. ***(3)(b)***

This subsection sets out a number of conditions that must be met when an interim claim is made. ***(4)***

The interim claim must be accompanied by a declaration by the relevant individual that he or she has incurred, or can reasonably expect to incur, a relevant loss or relevant allowances. ***(4)(a)***

The relevant individual must keep and have available all relevant records for the purposes of determining whether the estimated relevant loss and/or estimated relevant allowances were computed in a reasonable manner and to the best of that individual's knowledge and belief. ***(4)(b)***

A corresponding claim for relief in respect of the relevant loss or relevant allowances must be made under ***section 395A or 304(3A)*** by the specified return date for the tax year in which the relevant loss is sustained or relevant allowances are to be claimed. This is referred to as a "final claim". If a final claim is not made by the specified return date and the amounts of the relevant loss and the relevant allowances that would be subject to such a claim are not lower than the estimated relevant loss and the estimated relevant allowances upon which the interim claim was made, then the interim claim will be deemed to be a final claim. ***(4)(c)***

***Subsection (5)*** provides for the amendment of interim claims in certain circumstances. This is subject to ***section 959V***. ***(5)***

Up to the point the final claim is made, the relevant individual should reduce the amount of an interim claim: ***(5)(a)***

- where the relevant individual becomes aware that the amount of the interim loss exceeds the correct amount of the estimated relevant loss or estimated relevant allowances; or
- where the relevant individual determines that a lower portion of the estimated relevant loss or estimated relevant allowances should be claimed.

Such an amendment should be made as soon as is reasonably possible and the revised amount should reflect the correct amount or correct portion.

Subject to certain time limits, the relevant individual may increase the amount claimed: ***(5)(b)***

- where the relevant individual becomes aware that the amount of the interim loss is lower than the correct amount of the estimated relevant loss or estimated relevant allowances; or
- where the relevant individual determines that a greater portion of the estimated relevant loss or estimated relevant allowances should be claimed.

Where the interim claim relates to a relevant loss sustained or relevant allowances to be claimed in the year of assessment 2020, such an amendment may not be after 31 May 2021. Where the interim claim relates to a relevant loss sustained or relevant allowances to be claimed in the year of assessment 2021, such an amendment may not be made after 31 May 2022.

This subsection deals with the determination of statutory interest (under ***section 1080***) and the payment of preliminary tax (under ***section 959AO***) in circumstances where a relevant individual makes an interim claim which gives rise to an excess claim. ***(6)***

The date on which the tax is repaid or offset in respect of the excess claim will be the date on which the amount of the tax became due and payable for the purpose of determining interest in accordance with ***section 1080(2)(c)***. ***(6)(a)(i)***

Where the interim claim was made neither deliberately or carelessly and the relevant individual reduces the interim claim to reflect the correct amount as soon as is reasonably possible, the date on which the claim is reduced will be the date on which the tax became due and payable for the purposes of determining interest in accordance with ***section 1080(2)(c)***. For the purpose of paragraph (a)(ii), the terms "deliberately" and "carelessly" are to take their meaning from ***sections 1077E***, or ***1077F***, as appropriate, which sets out the penalties that apply for deliberately or carelessly making an incorrect return or for failing to make certain returns. ***6)(a)(ii)***

Tax repaid pursuant to this section will be disregarded for the purpose of determining whether the relevant individual paid the correct amount of preliminary tax in accordance with ***section 959AO(3)***. ***(6)(b)***

Paragraph (b) will not apply where an interim claim is made in a return in respect of which ***subsections (2) or (5)*** of ***section 1077E*** or ***subsection (2)*** of ***section 1077F*** applies. The effect of this paragraph is that paragraph (b) will not apply where the interim claim was made in an incorrect return either deliberately or carelessly. ***(6)(c)***

## 395C Limitation of relief for relevant losses and allowances

This section provides for a limitation of relief for relevant losses and allowances.

***Subsection (1)*** defines two key terms for the purpose of this section. ***(1)***

The term "relevant allowances" is to have the same meaning as it has in ***section 304(3A).***

A "specified individual" is defined an individual to whom Chapter 2A of Part 15 applies, prior to making a claim under this Chapter or ***section 304(3A).*** Chapter 2A of Part 15 limits the amount of certain reliefs that may be used by certain high-income individuals and is referred to as the High-Income Earner Restriction.

Subject ***subsections (3) and (4),*** the total amount of relevant losses and relevant allowances that may be claimed is €25,000 ***(2)***

The total amount of relevant losses and relevant allowances that may be claimed by a specified individual (i.e. an individual who is subject to the High-Income Earner Restriction) is restricted in accordance with ***subsection (4).*** ***(3)***

The total amount of relevant losses and relevant allowances that may be claimed will be restricted to the extent that there can be no reduction in the amount of any other relief used, within the meaning of ***section 485C(2)(a),*** in respect of the year of assessment 2019 prior to such claims being made. The effect of this restriction is that the amount of relief that can be given to individuals who are subject to the High- Income Earner Restriction is calculated after any other relief which they are entitled to claim for the tax year 2019. ***(4)***

# CHAPTER 3
## *Corporation tax: loss relief*

### Overview

This Chapter provides, in the case of corporation tax, for —

- relief for trading losses generally by way of set-off against all profits of the company of the current accounting period, the carry back of unrelieved losses for set-off against profits of preceding accounting periods ending within a specified time and the carry-forward of losses for set-off against trading income of future accounting periods (***section 396***),
- relief for relevant trading losses (i.e. losses incurred in a trade the income from which is taxable at the 12.5% rate) by way of offset against relevant trading income (i.e. income taxable at the 12.5% rate) of the current accounting period and the carry back of such unrelieved losses against relevant trading income of preceding accounting periods ending within a specified time (***section 396A***),
- relief on a value basis for relevant trading losses that cannot be offset against relevant trading income (***section 396B***),
- a limit on relief for losses of participating institutions in NAMA (***section 396C***),
- relief for terminal losses sustained in the final 12 months of trading (***section 397***),
- relief for "Case IV" losses against other "Case IV" income of the same accounting period or a subsequent accounting period (***section 399***),
- relief for the excess of "Case V" deficiencies against "Case V" income of previous accounting periods (that is, a carry back) ending within a specified time and the carry-forward of an excess of such deficiencies not so relieved (***section 399***).

The Chapter also ensures the continuing availability of losses and capital allowances following the transfer of a trade to another company, provided there is a substantial degree of common identity of ownership of the 2 companies concerned (***section 400***). Finally, the Chapter contains provisions concerned with countering the tax avoidance device of "loss buying" (***section 401***) and preventing in certain instances losses which were incurred in respect of transactions which were exempt from tax from being taken into account (***section 398***).

The availability of loss relief is restricted in the case of certain trades and activities by other provisions of the Act. The restriction may involve allowing the loss to be offset only against other income arising to the person from the same trade or activity. This type of restriction of relief is known as "ring-fencing". The most important such provisions are —

- ***section 403*** (restriction on use of capital allowances for certain leased assets),
- ***section 404*** (restriction on use of capital allowances for certain leased machinery or plant),
- ***section 405*** (restriction on use of capital allowances on holiday cottages),
- ***section 406*** (restriction on use of capital allowances on fixtures and fittings for furnished residential accommodation),
- ***section 407*** (restriction on use of losses and capital allowances for qualifying shipping trade),
- ***section 455*** (restriction of losses attributable to the sale of goods within the meaning of ***Part 14*** – that is, manufacturing losses),
- ***section 687*** (treatment of losses arising in a petroleum trade),
- ***section 753*** (restriction on relief for losses in case of dividends paid out of accumulated profits), and
- ***section 1013*** (losses and capital allowances in respect of limited partnerships).

Special provisions also apply in the way losses may be used where they arise in a trade of farming (***section 663***). It is to be noted that special restrictions apply on the amount of losses which may be utilised for relief where a company submits a late corporation tax return (***section 1085***).

## 396 Relief for trading losses other than terminal losses

### Summary

This section provides for a trading loss to be carried forward from an accounting period and set off against income of the same trade for succeeding accounting periods. Alternatively, a company may claim to have the loss set off against profits of any description for the same accounting period in which the loss was incurred or of an immediately preceding accounting period of the same length. It is also provided that charges on income laid out wholly and exclusively for trade purposes, to the extent that they exceed the total profits of the accounting period from which they are deductible, are treated as trading expenses for the purposes of computing a loss and may be carried forward for set-off against income of the same trade for a subsequent accounting period.

### Details

#### *Carry-forward of losses*

Subject to ***section 396C***, the carry-forward and set-off of a loss incurred in a trade against income from the same trade for a subsequent accounting period is to be allowed on the making of a claim for such relief. A loss carried forward must be set off against the income of the trade for an earlier in priority to a later accounting period. A loss or a part of a loss cannot be relieved by way of carry-forward if it is relieved against profits of the same accounting period or of the immediately preceding accounting period under ***subsection (2)*** or if it is relieved under ***section 396A*** or ***396B***. ***(1)***

#### *Carry-back of losses and same period set-off*

As an alternative to the carry-forward of relief under ***subsection (1)***, a company is entitled to claim that a trading loss incurred in an accounting period may be set — ***(2)***

- against profits of any kind (that is, trading income, other income and chargeable gains) of the same accounting period, and
- against profits of any kind of all the accounting periods ending in the period (which is the same length as the length of the accounting period in which the loss was incurred) which immediately precedes the accounting period in which the loss was incurred. This only applies where the trade was carried on by the company during that immediately preceding period. Any balance may be carried forward against trading income of the same trade.

The profits of an accounting period against which a loss is to be set are the profits as reduced by an earlier loss brought forward under ***subsection (1)*** to that accounting period.

Where relief is to be given against the profits for an immediately preceding period of the same length as the accounting period in which the loss was incurred and that preceding period comprises more than one accounting period the loss is to be set against the profits for a later accounting period in priority to those for an earlier accounting period or part of an accounting period comprised in that preceding period.

#### *Profits against which losses may be carried back*

The profits against which a loss may be carried back are limited to those arising in accounting periods or parts of accounting periods falling within a period of time equal in ***(3)*** length to, and immediately preceding, the accounting period in which the loss was incurred.

**Example 1**

Company A’s accounts disclose results —

| | | |
|---|---|---|
| 12 months to 30/9/2001 | Profits | €60,000 |
| 9 months to 30/6/2002 | Loss | (€90,000) |

The loss for set-off against the profits of the accounting

| | |
|---|---|
| period to 30/9/2001 is limited to 9/12 x €60,000 = | (€45,000) |
| The balance of loss available for carry-forward and set-off against profits of the trade arising subsequent to 30/6/2002 is (€90,000)–(€45,000) = | (€45,000) |

**Example 2**

Company B’s accounts disclose results —

| | | |
|---|---|---|
| 12 months to 31/12/2000 | Profits | €20,000 |
| 9 months to 30/9/2001 | Profits | €60,000 |
| 12 months to 30/9/2002 | Loss | (€80,000) |

| | |
|---|---|
| The loss for set-off against the profits of the accounting period to 30/9/2001 is 9/12 x €80,000. | (€60,000) |
| The set-off against the profits of the accounting period of 12 months to 31/12/2000 is however limited to the amount of those profits apportioned to the period from 1/10/2000 to 31/12/2000, namely 3/12 x €20,000 = | (€5,000) |
| The balance of loss available for carry-forward and set-off against the profits of the trade arising subsequent to 30/9/2002 is €80,000 – (€60,000 + €5,000) = | (€15,000) |

***“Case III” trades***

Relief for losses by way of carry-back and same period set-off against other income is not available where a trade is carried on wholly abroad. Such losses may only be relieved by way of carry-forward for set-off against future profits of the same trade. Such a trade is entitled to terminal loss relief under ***section 300***. ***(4)***

***Computation of losses***

A trading loss is to be computed in the same manner as trading income. ***(5)(a)***

In computing the loss incurred in a trade of a life assurance company, management expenses which are deductible under ***section 83*** are not to be deducted in computing a loss sustained in the trade. This ensures that such management expenses cannot be taken into account twice and, effectively, relieved twice. ***(5)(b)***

***Treatment of interest and certain dividends***

While in strictness interest and dividends (other than dividends paid by an Irish company) are in the nature of trading receipts in the hands of a company such as a financial concern, such receipts may in practice have borne corporation tax under provisions other than those ***(6)*** applicable to trading income (for example, untaxed interest from Irish Government securities or dividends from British companies may have been charged under Case III of Schedule D). In such circumstances the loss in the trade is to be set off not only against the trading profits charged under Case I but also against such investment income charged under Case III.

Dividends received by an Irish resident company from another Irish resident company are not within the charge to corporation tax in the hands of the receiving company (***section 129***) and the loss, therefore, is not available for carry forward against such dividends. Relief in such circumstances may, however, be available under ***section 158***.

### *Charges on income*

Where charges on income (net of any part of those charges relieved under ***section 243B***) exceed the profits against which they are deductible, any part of those charges which are paid wholly and exclusively for the purposes of the company's trade may, up to the amount of the excess, be treated as a deductible trade expense and, thus, may be used to create a loss which can then be carried forward for relief against the future profits of the same trade. ***(7)***

### *Application*

Loss relief under this section is only available to companies carrying on a trade which is within the charge to corporation tax at all material times. ***(8)***

### *Time limits for claims*

A claim to set off a trading loss against profits of any kind for the current or preceding accounting period may be made within 2 years from the end of the accounting period in which the loss was incurred. ***(9)***

**Example**

| | | | |
|---|---|---|---|
| Accounting period | 12 months | 9 months | 12 months |
| | to 31/12/00 | to 30/9/01 | to 30/9/02 |
| Trading income | €10,000 | Nil | €40,000 |
| Other income chargeable to | | | |
| corporation tax | €110,000 | €160,000 | €170,000 |
| Total profits | €120,000 | €160,000 | €210,000 |

In the 9 months to 30/9/01 the company incurred a trading loss of (€20,000).

Carry forward of loss (***subsection (1)***)

The loss can be carried forward against income of the trade —

| | |
|---|---|
| Accounting period 12 months to 30/9/02 | |
| Income from trade | €40,000 |
| less loss carried forward | (€20,000) |
| | €20,000 |
| Other income | €170,00 |
| Total profits for assessment | €190,00 |

Same period set-off (***subsection (2)***)

The loss may be set off against other profits of the accounting period in which the loss was incurred —

| | |
|---|---|
| 9 months to 30/9/01 | |
| Total profits | €160,000 |
| less trading loss set off | (€20,000) |
| Net profits | €140,000 |

If the trading loss for the 9 months to 30/9/01 was (€180,000) a sum of (€160,000) could be set against the other profits of that accounting period and the balance (€20,000) carried back and set against the apportioned profits of €90,000 for 9 months to 31/12/00.

## 396A Relief for relevant trading losses

### Summary

This section places a ring-fence on the offset of certain trading losses incurred in an accounting period of a company against profits of the company in that accounting period and in the previous accounting period.

### Details

#### *Definitions*

The section identifies "relevant trading losses" as trading losses incurred by a company in an accounting period other than so much of the loss as is incurred in an excepted trade (i.e. a trade the income from which is taxable at the 25 per cent rate).

"Relevant trading income" has the same meaning as in ***section 243A***, i.e. trading income other than so much of that income as is taxable at the 25 per cent rate.

#### *Ring-fencing of losses*

The sideways or backwards set-off of a loss under ***section 396*** does not apply to relevant trading losses. For the purposes of ***section 396*** losses of an accounting period are to be reduced by so much of those losses as are a relevant trading loss.

#### *Set off of losses*

Instead, the losses may be set off sideways or backwards against:

- relevant trading income of the accounting period or of certain previous accounting periods,
- income of a trade of non-life insurance, reinsurance and against the investment income of a life assurance company that is attributable to its shareholders, and
- foreign dividend income which is chargeable at the 12½ rate of tax under ***section 21B***.

[Losses which are not subject to a claim for sideways or backwards set off or are not used under a claim under this section, ***section 396B***, ***420*** or ***420B*** may be carried forward under ***section 396(1)*** and set against income of future years from the trade in which they were incurred.]

Where trading losses are to be set backwards under this section the losses of an accounting period can be offset against profits of a period equal in length to the accounting period and which ends immediately before the accounting period. If necessary parts of accounting periods can be taken into account for this purpose.

A claim for relief must be made within 2 years after the end of the accounting period in which the loss was incurred.

**Example:**

| | |
|---|---|
| Accounting period 12 months to 31/12/03 | € |
| Relevant trading loss | (1,000) |
| Other trading loss | (500) |
| Other income | 1,200 |
| Accounting period 12 months to 31/12/02 | |
| Relevant trading income | 1,600 |
| Other income | 200 |
| Computation | |
| AP 31/12/03 Other income | 1,200 |
| Less Other trading loss | (500) |
| Taxable | 700 |
| AP 31/12/02 Relevant trading income | 1,600 |
| Less Relevant trading loss (from 31/12/03) | (1,000) |
| | 600 |
| Other income | 200 |
| Taxable | 800 |

## 396B Relief for certain trading losses on a value basis

### Summary

This section provides relief for relevant trading losses (i.e. losses arising in a trade the income from which is taxable at the standard corporation tax rate in an accounting period which cannot otherwise be relieved. This is done by reducing the corporation tax payable for the accounting period by an amount determined by applying the standard rate of corporation tax to the amount of the unrelieved loss. Corporation tax which is referable to profits of policyholders is excluded from relief under this section.

### Details

#### *Definitions*

"relevant corporation tax" is the corporation tax which can be reduced by the relief. It is the corporation tax which would be chargeable for the accounting period apart from: ***(1)***

- payments of tax withheld by the company from certain payments (***sections 239*** and ***241***),
- group relief for losses under ***section 420B***, and
- surcharges on undistributed income (***sections 440*** and ***441***).
- any corporation tax attributable to a life business company (within the meaning of ***section 706***) where that corporation tax is referable to profits of policyholders.

"relevant trading loss" has the same meaning as in ***section 396A*** (i.e. a trading loss incurred by a company in an accounting period other than so much of the loss as is incurred in an excepted trade – i.e. a trade the income from which is taxable at the 25 per cent rate).

***The relief***

Where the amount of a relevant trading loss incurred by a company in an accounting period exceeds the amounts that could, if a claim had been made, have been set off in respect of that loss against income of the company (under ***section 396A***) then the company can claim relief in respect of the excess. ***(2)***

Where a company claims relief under this section in respect of the excess, the relevant corporation tax for the accounting period is to be reduced by an amount determined by applying the standard rate to those "relevant trading losses". ***(3)***

***Utilisation of relief***

Losses can be relieved in this way against corporation tax of the accounting period in which they were incurred and of previous accounting periods ending within a specified time. ***(4)***

The previous accounting periods in which relief can be given for a loss incurred in an accounting period are those ending in the time immediately preceding the accounting period in which the loss was incurred and which is equal in length to that accounting period. However, the reduction which can be made in the relevant corporation tax for an accounting period falling partly before that time is to be proportionately reduced on a time basis.

***Carry forward of unused amounts***

Special rules apply to determine the amount of the losses which are to be regarded as having been used. The amount of losses which are to be regarded as used is determined by regrossing the loss relief given at the standard corporation tax rate. ***(5)***

In loss relief generally, losses are offset against profits before deducting charges. Consistency with that approach is achieved by providing that the amount of losses treated as used is the amount which would have been treated as used if there were no non-trade charges on income, expenses of management or other similar amounts deductible from profits of more than one description. This ensures that only the appropriate amount of losses is brought forward. However, the definition ensures that there is nothing to prevent the carry forward of excess capital allowances under ***section 308***.

A claim for relief must be made within 2 years after the end of the accounting period in which the loss was incurred. ***(6)***

## 396C Relief from Corporation Tax for losses of participating institutions

### Summary

This section was inserted by section 240 and Schedule 3 of the National Asset Management Agency Act 2009. It places a limit on the amount of the trading income of a participating institution, and all other participating institutions within the same group, against which losses forward may be set off in any accounting period.

The section does this by—

- firstly setting a "relevant amount" for each accounting period. This relevant amount is determined by aggregating the trading income and trading losses of each group company in the period and then taking a fixed percentage of 50 per cent of that aggregate figure, and

- secondly by allocating that "relevant amount" between the companies in the group on the basis of each company's share in the trading income of the group. This share in the group "relevant amount" is defined as the "relevant limit".

The effect is that a participating institution can claim relief under s***ection 396(1)*** for any losses incurred in previous accounting periods but only up to this relevant limit. Where a participating institution has unused losses forward, it may transfer an amount of those excess losses to another group company participating in the NAMA scheme provided that:

- the transferee company has sufficient income, having availed of its own losses forward, to fully use the amount transferred, and

- the total of the amount transferred together with the transferee's own losses forward does not exceed the transferee's relevant limit.

The net effect of the measure is that, taking the group of participating institutions as a whole, the total amount of losses forward that can be offset against the income of the group will not exceed 50 per cent of the groups income.

## Details

### *Definitions*

"available losses" in relation to an accounting period of a participating institution, means the amount of losses carried forward by a participating institution from previous accounting periods for which relief is available in accordance with ***section 396(1)*** in that accounting period or in succeeding accounting periods; ***(1)(a)***

"group company" is defined in relation to a participating institution and means a company which is itself a participating institution and has an accounting period that coincides with the accounting period of the participating institution, where throughout the accounting period of the participating institution:

(a) the company is a subsidiary of the participating institution,

(b) the participating institution is a subsidiary of the company, or

(c) both the company and the participating institution are subsidiaries of a third company.

"participating institution" and "subsidiary" have the same meanings as in section 4 of the National Asset Management Agency Act 2009.

"relevant amount" is the amount of income which can be sheltered by losses forward in any one year. It is calculated by taking 50% of the sum of the trading income and trading losses of a participating institution and all of its group companies in an accounting period.

"relevant limit" is the proportion of the relevant amount applicable to each group company. It is calculated by applying to the relevant amount, the same proportion as the company's income is to the group total income before losses.

This proportion is calculated by the formula-

$$\frac{A \times B}{C}$$

Where-

A is the relevant amount for the group (i.e. 50% of the net trading income of the participating institution and all of its group companies),

B is the gross trading income of the participating institution, and

C is the gross trading income of the group.

An accounting period of a company coincides with that of another company where the company's accounting period begins and ends on the same day as the other company's accounting period. ***(1)(b)(i)***

Only trading income and trading losses of Irish resident companies and Irish branches of non-resident companies come within the scope of the legislation. ***(1)(b)(ii)***

***Limit on relief***

Where for any accounting period, a participating institution makes a claim under ***section 396(1)*** for relief in respect of available losses incurred or deemed, under ***subsection (3)***, to have been incurred in a trade carried on by that institution, the amount of the losses which may be set off against trading income of the trade in that accounting period cannot exceed the relevant limit of the participating institution for that period. ***(2)***

This subsection provides for situations where a participating institution is unable to use all or some of its losses due to an insufficiency of income. In such cases, the participating institution can surrender the loss or part of the loss to a group company (the transferee company). The amount surrendered cannot exceed the relevant limit of the transferee company (after taking account of its own loss relief). The transferee company must make a claim for the amount surrendered and where it does so, that amount is deemed to be a loss incurred in its own trade for the purpose of making a claim for relief under ***section 396(1)***. In such cases, the transferee's income is treated as reduced by the amount transferred and the surrendering company's available losses are reduced by a similar amount. ***(3)(a)***

Two or more companies can use losses surrendered to them by another participating institution but in such cases, relief is not to be given more than once in respect of the same amount. ***(3)(b)***

The conditions for claiming the relief are: ***(3)(c)***

(i) the claim must be made on the Corporation Tax return of the claimant company,

(ii) the consent of the surrendering company is required, and

(iii) the claim must be made within 2 years of the end of the surrendering company's accounting period.

Where an inspector discovers that any group relief given is excessive, he or she may make an assessment to Corporation Tax under Case I of Schedule D in the amount which should in his/her opinion be charged. ***(4)(a)***

***Paragraph (a)*** is without prejudice to ***Chapter 5 of Part 41*** which deals with the making of amended assessments or to the making of all such adjustment or discharges as achieve a correct result when group relief has been allowed in an excess amount. ***(4)(b)***

***Subsection (5)*** provides that the restriction will come into effect in respect of claims for loss relief made in respect of accounting periods commencing on or after, the passing of the National Asset Management Agency Act 2009 and does not have effect for any accounting period commencing on or after 1 January 2014. ***(5)***

## 396D Accelerated loss relief for certain accounting periods

### Summary

This section provides for a temporary acceleration of corporation tax loss relief for tax compliant companies who have incurred or reasonably expect to incur trading losses in accounting periods that include some or all of the period from 1 March 2020 to 31 December 2020 (specified accounting periods). A company may make a claim (an interim claim) to carry back up to 50% of its estimated trading loss for the specified accounting period against its profits of the preceding accounting period. An interim claim may be made as early as 4 months after the beginning of the specified accounting period and up to 5 months after the end of the specified accounting period. A company can revise its interim claim as the specified accounting period progresses (and up to 5 months after its end), including increasing its interim claim where the company estimates that its trading loss for the specified accounting period will be greater than the amount included in an earlier interim claim.

To be eligible to make an interim claim, a company must file (or have filed) a tax return for the preceding accounting period as well as being generally tax compliant. The company will also be required to make a declaration that it has incurred, or it will reasonably expect to incur, a loss in the specified accounting period.

The maximum amount of the estimated loss which qualifies for early carry-back is 50 per cent. The remaining loss, when properly quantified in final accounts prepared after the end of the specified period, will qualify for carry-back in due course under the normal rules.

## 397 Relief for terminal loss in a trade

### Summary

This section provides that a loss incurred in the last 12 months of a discontinued trade, in so far as it cannot be otherwise relieved, may be carried back and set against the trading income of the same trade in the 3 preceding years.

### Details

A company may claim to set a trading loss incurred in the last 12 months of a trade carried on by it against its income from the same trade in the 3 preceding years. This only applies where the loss has not or cannot be otherwise relieved. The loss is to be set against income of a later period in priority to an earlier period and is not to displace relief already given or capable of being given for losses carried forward from earlier periods. ***(1)***

Losses and income are to be apportioned as necessary where accounting periods fall partly outside the periods of 12 months and 3 years already mentioned. ***(2)***

The provisions of ***subsections (5)*** to ***(8)*** of ***section 396*** are applied for the purposes of terminal loss relief. This secures that for terminal loss purposes — ***(3)***

- a loss is to be computed in the same manner as profits,
- relief is available against interest and dividends (other than dividends from a resident company) of a financial trading concern,
- charges on income in excess of profits, which are paid for the purposes of the trade, can, up to the amount of the excess, be treated as creating a loss qualifying for terminal loss relief, and
- relief is available only to a company which is within the charge to corporation tax at all material times.

Terminal loss relief does not operate to displace relief for charges on income paid for trade purposes.

**Example 1**

A company which makes up its accounts to December, 31 ceases to trade on 31/12/2002 and in the 12 months accounting period to that date incurs a trading loss of €10,000.

In the 12 months accounting period to 31/12/2002 the company also has investment income chargeable to corporation tax of €2,000. The trading loss to be carried back must be reduced by the amount of €2,000 because terminal loss relief is not deductible to the extent that it can be claimed under another provision, in this instance, ***section 396(2)***. The terminal loss which may be carried back for set-off against trading income of the 3 year period ending on 31/12/2001 is therefore €8,000, namely —

| | |
|---|---|
| Trading loss of final 12 months trading | €10,000 |
| Less: losses relieved against other income | (€2,000) |
| | €8,000 |

**Example 2**

A company ceases to trade on 30/6/2002 and the trading results are —

| | | |
|---|---|---|
| Accounting period 12 months to 31/12/2001 | Loss | (€60,000) |
| Accounting period 6 months to 30/6/2002 | Loss | (€20,000) |
| The loss of the final 12 months in respect of which terminal loss relief could be granted is — | | |
| 6 months period to 30/6/2002 | Loss | (€20,000) |
| 6 months period to 31/12/2001 (6/12 x €60,000) | Loss | (€30,000) |
| | | (€50,000) |

The 3 years trading income against which this loss could be set is that of the 3 year period ending 30/6/2002 —

| | Trading income |
|---|---|
| 6 months period to 30/6/2002 | Nil |
| 12 months period to 31/12/2001 | €10,000 |
| 12 months period to 31/12/2000 | €20,000 |
| 6 months period to 31/12/1999 | €10,000 |

The income of the 6 months period 31/12/1999 would be computed – 6/12 x trading income of 12 months accounting period to 31/12/1999 (€20,000) = 6/12 x 20,000 = €10,000.

Income of 3 years against which loss of final 12 months (i.e. €50,000) could be set off is, therefore, €40,000.

## 398 Computation of losses attributable to exemption of income from certain securities

To ensure that relief for losses incurred in dealing in Government-backed securities for periods in which such securities were not within the charge to tax is not available for periods when such securities are chargeable, the computation of the branch trading losses of a company are recast so as to include as trading receipts of the company such income as would have been included as trading receipts of the company had ***sections 43***, ***49*** and ***50*** not been enacted. In other words the company's branch loss relief carried forward is reduced by the amount of such income originally excluded in computing the loss relief, if the trade carried on through the branch or agency was a "financial" trade. Apart from ***sections 43, 49*** and ***50*** interest from Government-backed stock of a financial trade would be a trading receipt, while profits on the disposal of such stock would be "included in" trading receipts.

The losses which may be subject to recomputation under this section are specified by reference to the accounting periods in which the loss would be set off and by reference to the accounting period in which the loss arises.

## 399 Losses in transactions from which income would be chargeable under Case IV or V of Schedule D

### Summary

This section allows —

- a loss under Case IV for an accounting period to be set off against Case IV income of the same accounting period, and
- a loss under Case V for an accounting period to be set off against Case V income of an immediately preceding period of the same length.

Any unrelieved loss under either Case is permitted to be carried forward for set-off against corresponding income of subsequent accounting periods.

### Details

***"Case IV" losses***

Relief is given against Case IV income for losses incurred in transactions which, if they had resulted in a profit, would have been charged under Case IV. Such a loss is to be set off first against any Case IV profits of the accounting period in which the loss was incurred, and then against Case IV profits of subsequent accounting periods, beginning with the earliest of such periods. ***(1)(a)***

A loss on the sale of a certificate of deposit may be set off against other Case IV profits and also against the interest payable on the certificate if, had a profit been realised on the sale of the certificate, that profit would have been chargeable to tax under ***section 814***. ***(1)(b)***

***"Case V" losses***

Where the "single source" (see ***section 97(1)***) Case V computation for an accounting period results in a loss, the loss may, on due claim, be set off for corporation tax purposes against the Case V income of an immediately preceding period of the same length as the accounting period in which the loss was incurred. Any unrelieved balance may be carried forward and set off against Case V income of subsequent accounting periods, beginning with the earliest. ***(2)***

***Subsection 2A*** applies to companies not resident in the State that came within the charge to corporation tax on 1 January 2022 by virtue of ***section 25(2A)***. This subsection allows for Case V losses carried forward by such a company as at 31 December 2021 under ***section 384(2)*** (being an income tax provision) to be treated as an amount of Case V losses carried forward under ***section 399(2)*** (being the corporation tax equivalent). ***(2A)***

The period to which the "carry back" relief for Case V losses is to be applied is a period of equal length to, and immediately preceding, the accounting period in which the "loss" (that is, the excess of deficiencies over surpluses) was incurred. ***(3)***

The time within which the "carry back" relief for Case V relief may be claimed is 2 years from the end of the accounting period in which the "loss" was incurred. ***(4)***

## 400 Company reconstructions without change of ownership

### Summary

This section enables the right to capital allowances (and liability to balancing charges), relief for losses, and relief for deemed borrowing cost and total spare capacity arising from interest limitation rules to be transferred from one company to another where a trading company ceases to carry on a trade and, following the cessation, another company carries on the trade. Such a transfer is allowed only where there is substantial common identity in the ownership of the trade both before and after the change (to the extent of not less than 75 per cent). Where the conditions of the section are fulfilled, the successor company in effect steps into the shoes of the predecessor for the purposes of capital allowances, balancing charges and losses.

### Details

#### *Ownership tests*

A trade carried on by 2 or more persons (for example, by companies in partnership) is treated as belonging to such persons in the shares in which they are entitled to the profits of the trade. ***(1)(a)***

A trade or interest in a trade belonging to a trustee (other than for charitable or public purposes) is treated as belonging to the person for the time being entitled to the income under the trust. ***(1)(b)***

A trade or interest in a trade belonging to a company is – where the result of so doing is that the 75 per cent test is satisfied (see below) – to be treated as belonging to — ***(1)(c), (2) & (3)***

- the persons owning the ordinary share capital of the company in proportion to their holdings of that capital, or
- where the company is a subsidiary company, its parent company or the persons owning the ordinary share capital of the parent company in proportion to their holdings of that capital.

Further, any ordinary share capital owned by a company may be regarded for the purposes of the 75 per cent test as owned by a person or body of persons controlling that company. For this purpose, control is defined widely to include the actual ownership of shares, the possession of voting power and power, by virtue of the company's articles of association or other document regulating the company, to ensure the company conducts its affairs in accordance with the controller's wishes.

In determining whether and to what extent a trade belongs at different times to the same persons, relatives (as defined) and persons from time to time entitled to the income under any trust are treated as a single person. ***(4)***

#### *Application*

Where a company ceases to carry on a trade and another company begins to carry on that trade, the Corporation Tax Acts are to have effect as regards the right to capital allowances and losses in accordance with this section where certain conditions are satisfied. These conditions are — ***(5)***

- the same persons must own at least a 75 per cent share in the trade at some time within 1 year before the change or at any time within 2 years after the change, and
- the trade must, during that period of time have been carried on by a company or companies within the charge to corporation tax (this condition would not be satisfied if, for example, at any time during those periods the trade was carried on by an individual or a partnership of individuals).

The section applies where the activities of the predecessor company's trade are merged in activities constituting the trade of the successor company.

***Capital allowances***

The capital allowances and charges which could have been made to or on the predecessor company if it had continued to trade are to be made to or on the successor company, that is, as though the change in ownership had not taken place. The sale or transfer of the assets by the predecessor company to the successor company does not give rise to any allowance or charge. ***(6)***

***Terminal loss relief***

The predecessor company is not entitled to terminal loss relief under ***section 397*** except in the circumstances described below. ***(7)***

The successor company is entitled to carry forward, against the profits of the trade so long as the successor continues to carry the trade on, any trading losses of the predecessor company for which the predecessor company has not obtained relief against total profits under ***section 396(2).***

Where the successor ceases to carry on the trade within 4 years after the succession, and the successor's income is not sufficient to absorb the full "terminal loss" relief under ***section 397***, the unabsorbed balance of the relief may be given to the predecessor against its income from the trade. ***(9)***

Where the successor ceases to carry on the trade within one year after the succession, the predecessor will be entitled to "terminal loss" relief for any loss which it incurred when it was carrying on the trade. This secures that the predecessor gets the relief for its own loss incurred within the 12 months before trading finally ends (as well as for the successor's loss as so provided).

The "but" clause ensures that, in any event, the period over which the relief can be given will not extend back further than 4 years from the date on which the trade actually ceases.

***Treatment of deemed borrowing cost and total spare capacity***

An amount of deemed borrowing costs or total spare capacity, as defined in ***Part 35D***, carried forward under ***sections 835AAD or 835AAE*** by the predecessor company will be available for use by the successor company where there is a transfer of a trade without a change of ownership to which the provisions of section 400 apply. Where ***subsection (7A)*** applies the predecessor is not entitled to relief in respect of the deemed borrowing costs or total spare capacity. ***(7A)***

***Treatment of securities***

Securities held as trading stock are to be treated as if sold by the predecessor to the successor at market value for the purposes of ***section 748*** (which deals with "bond-washing"). The effect of this is to ensure that the bond-washing provisions apply to the predecessor and the successor on the basis that the latter acquired the securities from the former at market value. ***(8)***

***Multiple transfers***

Where a trade is transferred from one company to another and the 75 per cent ownership test within the period taken for comparison in ***subsection (1)(a)*** is not satisfied but within 2 years a third company takes over the trade, then (provided that the ownership test in relation to the first and the third companies is satisfied) both changes are governed by this section so that the reliefs for losses forward and capital allowances run right through for the benefit of both successors. Similarly, the relief for terminal losses on a cessation by ***(10)*** the third company will run back for the benefit of the second and first companies; but relief for terminal loss is not to be given on cessation of trading by the second company on transfer to the third.

***Parts of trades***

Where the successor carries on the activities of the transferred trade as part of a larger trade or where the predecessor transfers part only of the trade, both the trade incorporated as part of a larger trade and the part of a trade transferred may be regarded as a separate trade for the purposes of the application of this section. ***(11)***

Where a part of a trade is to be treated as a separate trade for this purpose, any necessary apportionments of receipts and expenses are to be made. ***(12)***

Where in relation to an apportionment made under subsection (12), it appears at the time of the apportionment, that it is material to the liability to tax of 2 or more companies and there is disagreement as to the basis of apportionment, the inspector shall issue in writing a notice of determination in respect of the apportionment. ***(13)(a)&(b)***

A company aggrieved by an apportionment made under this subsection may appeal the apportionment by notice in writing to the Appeal Commissioners. An appeal must be made within 30 days of the date of the notice of apportionment. The Appeal Commissioners will hear and determine an appeal in the manner provided for in Part 40A of the Direct Tax Acts.

***Claims***

Any relief obtainable under the section by way of discharge or repayment of tax is to be given on the making of a claim. ***(14)***

## 401 Change in ownership of company: disallowance of trading losses

### Summary

This section contains provisions to counter the tax-avoidance device known as “loss-buying”. The effect of the section is to deny carry-forward relief for the unrelieved trading losses, total spare capacity (resulting from interest limitation rules under ***Part 35D***) and certain capital allowances of a company where, in association with a change in ownership of the company, there is a major change in the activities of its trade or, at the time of the change of ownership, the company’s trade is near dormant.

### Details

***Major change in company trade***

As examples of what would constitute a major change in the nature or conduct of a company’s trade the section sets out 2 types of change. The first is a change in the type of goods, services or facilities dealt in or provided, and the second is a change in customers, outlets or markets. It should be noted that this is not an exhaustive exposition of what constitutes such a change. The section applies even if the change is the result of a gradual process which began outside the 3-year period mentioned. However, it remains necessary to show that the change which took place within the 3-year period was of itself a major change. ***(1)***

***Application***

Relief for losses, total spare capacity carried forward under ***section 835AAE*** and certain capital allowances are not to be available where either of 2 sets of circumstances apply. In the first case, there must within a period 3 years be both a change in the ownership of the ***(2)*** company and a major change in the nature or conduct of a trade carried on by it. In the second case, the change in ownership must take place at a time when the scale of the activities in the trade has become small or negligible and before there has been any considerable revival.

***Restrictions***

Where either set of circumstances applies, losses incurred in an accounting period beginning before the change in ownership are not to be available for relief by set-off against income or other profits of an accounting period ending after the change. Neither is relief in respect of unabsorbed losses and capital allowances carried forward in relation to income tax and corporation profits tax (that is, losses and capital allowances which arose in periods before the introduction of corporation tax) to be given against the corporation tax payable for an accounting period ending after the change. Additionally, no relief is to be granted in an accounting period after the change of ownership for total spare capacity arising under ***section 835AAE*** in an accounting period beginning before the change in ownership. ***(2)***

***Company reconstructions***

Company reconstructions within ***section 400*** are brought within the scope of this section by looking through the reconstruction and regarding the trade carried on both before and after the reconstruction as one continuous trade. Hence, the disallowance of losses extends to losses incurred both before and after the reconstruction and the comparison to be made in determining whether the activities of the trade have become small or negligible may extend into the period before the reconstruction. ***(4)***

***Apportionments***

The accounting period in which the change of ownership takes place is divided into 2 separate accounting periods, namely, one ending with the change of ownership and the other commencing immediately after the change of ownership. The profits or losses are to be apportioned to the 2 new accounting periods on a time basis. If apportionment on this basis does not prove just or reasonable (either to the Revenue or to the company) provision is made for an alternative "just and reasonable" basis to be adopted. Any dispute about such an apportionment is to be determined by the Appeal Commissioners. ***(3)***

***Balancing charges***

The "loss buyer" who takes over an asset along with a trade will not have to bear a balancing charge on the disposal of the asset, except to the extent that capital allowances given in respect of it before the change of ownership have effectively reduced profits which arose before the change. Where both loss relief and capital allowances were available to offset these profits, it is to be assumed that capital allowances have been used in priority to losses. ***(5)***

***Time limits***

Time limits for assessment purposes are provided. An assessment may be made within 4* years from the latest of the circumstances which determines that a change in the nature or conduct of a trade has taken place. The time limit is needed because an assessment might be required to withdraw relief for trading losses given after the change of ownership and before a subsequent major change in the nature or conduct of the trade which made that change of ownership effective to cut off the trading losses. ***(6)***

* in relation to assessments made on or after 1 January 2005 – 10 years for assessments made before that date.

***Schedule 9***

***Schedule 9*** is applied for the purposes of supplementing the section. ***(7)***

CHAPTER 4
*Income tax and corporation tax: treatment of certain losses and certain capital allowances*

## Overview

The provisions of this Chapter (other than ***section 402***) restrict the use of losses, or of losses attributable to capital allowances, to particular classes of income.

Under these provisions, where the amount of the losses or capital allowances cannot be used in full for a period, they may be allowed only against the same class of income in a following period. Other profits are not available for relief against such losses or capital allowances. This mechanism is generally known as “ring-fencing”.

Certain of the provisions also restrict the use of losses for the purposes of group relief.

***Section 402*** allows companies to compute capital allowances and loss relief in a currency other than the euro where the activities of the business are primarily carried on in a currency other than the euro.

## 402 Foreign currency: tax treatment of capital allowances and trading losses of a company

### Summary

This section is concerned with the calculation of capital allowances and loss relief for companies whose primary currency is a currency other than the euro.

The section recognises that companies choosing to do business from Ireland may not wish to have a euro currency focus to the business they transact from Ireland. In assessing the attractions of our 12½ per cent regime of corporation tax, foreign investors want to be assured that 12½ per cent means 12½ per cent of their profits as measured in say US dollars or whatever might be the primary currency of their business. Computing allowances for capital expenditure, and relief for any losses which may arise, in euro would create an uncertainty for non-euro businesses as to what the value of those allowances and reliefs were in the currency of the business. The net result could be effective rates of tax in terms of the currency of the business which could be less than or greater than the intended 12½ per cent rate.

This section eliminates any potential uncertainty by allowing companies which have a “functional currency” other than the euro to compute capital allowances and loss relief in that non-euro functional currency.

***Section 402*** originally only applied to companies carrying on a trade, the profits of which are taxable under Case I of Schedule D, but was subsequently extended to apply to companies that are involved in the leasing of machinery or plant but that are not carrying on sufficient activities to be regarded as carrying on a trade.

### Details

#### *Definitions and construction*

“functional currency” is defined by reference to both resident and non-resident companies. ***(1)***
The definition reflects the definition of “local currency” in SSAP No. 20 – “Foreign Currency Translation”. While guidance as to the criteria for determining the currency of the primary economic environment is provided by this section, the criteria suggested (see ***subsection (1)(b)***) need not be conclusive in determining what is that currency. The

"primary economic environment" in which a company operates is undefined (although guidance on this is provided in ***subsection (1)(b)***) so as to allow any sufficiently compelling aspect or circumstance of the company which is not mentioned in ***subsection (1)(b)*** to take precedence over the criteria set out in that subsection.

The functional currency of a non-resident company need not determine the functional currency of its Irish trading activities.

For companies which make up their profit and loss account in euro terms that currency is their functional currency. The reference here is to a profit and loss account which has been "prepared" in terms of euro. This means that a set of euro accounts derived from accounts prepared in another currency would be ignored for this purpose. Whereas a change in functional currency would generally follow a significant change in circumstances, there is nevertheless the automatic entitlement to the euro as the functional currency where a company changes to preparing its accounts in that currency.

The notes on ***section 79*** should be consulted for guidance on the meaning of "profit and loss account" and "rate of exchange".

The determination of the currency of the primary economic environment should in all instances take account of, but not necessarily be decided by, the currency in which the net cash flows of the company (or, in the case of a non-resident company, its Irish trading activities) are generated. The currency of such cash flows is strongly indicative, rather than conclusive, evidence of the currency of the primary economic environment.

The provision for determining when expenditure is incurred mirrors the provision in ***section 316(2)*** which applies for the purposes of ***Part 9*** generally.

***Computation of capital allowances***

A company's capital allowances are to be computed in terms of the company's functional currency. The capital allowances are to be brought into the computation of the trading income or loss of the company before that income or loss is translated into a euro value. ***(2)***

The phrase "which may be nil" allows for the possibility that the result of the capital allowances computation in the functional currency is that none are due. The phrase conveys that the question of whether any allowances are due at all, which is implicit in computing the amount of such allowances, is also to be answered in terms of the company's functional currency. Reference is made to a "charge" as well as an "allowance" to include balancing charges within the functional currency computation.

The reference to allowances made "in taxing a trade" reflects the language of ***section 308***. This reference read together with "by reference to capital expenditure" makes it clear that the section is dealing with capital allowances although, as in ***section 308***, they are not referred to as such. ***(2)(a)(i)***

Although a capital allowance may be due in respect of an accounting period commencing after 1 January, 1994, if the capital expenditure in question was incurred before that date the capital allowance is to be computed by reference to the Irish pound, rather than functional currency, value of the expenditure at the time the expenditure was incurred. ***(2)(a)(ii)***

Capital allowances are to be computed in functional currency terms so that they may be brought into the computation of trading income or loss in that functional currency before the net income or loss is translated into a euro value.

Two further aspects of the computation of capital allowances in functional currency terms are addressed.

Firstly, the post 1 January, 1994 capital expenditure may not have been incurred in the functional currency of the company in question. For example, a "euro" company may have ***(2)(b)(i)*** paid for plant manufactured in the UK in sterling or a "US dollar" company may have purchased computer equipment in euro. ***Section 79*** requires companies to compute capital allowances in one currency only – the functional currency of the company for the accounting period in which the allowance is to be made. This single currency computation approach requires the sterling expenditure of the euro company to be translated into euro and the euro expenditure of the US dollar company to be translated into US dollars.

The second question which is addressed is what to do where the functional currency of a company changes, for example, when a euro company becomes a US dollar company. Where this happens there is to be no reopening of the computation of capital allowances which were made in accounting periods before that in which the functional currency changed. However, for the purposes of computing capital allowances to be made in accounting periods for which the company has the new functional currency, capital expenditures and allowances made should be translated into their values in terms of the new functional currency. The rate of exchange to be used, both in translating the expenditure and the allowances, is the "representative rate of exchange" for the day on which the capital expenditure was incurred. ***(2)(b)(ii)***

Corporate Case IV lessors should compute their capital allowances, and any excess capital allowances that are carried forward under section 308 TCA, in its functional currency. ***(2)(c)&(d)***

### *Computation of loss relief*

The computation of loss relief under ***section 396, section 396A*** and terminal loss relief under ***section 397*** are to be computed in terms of the company's functional currency. (Although there is no reference to loss relief under ***section 455(3)*** this provision is to be taken as applying to such loss relief where a claim is made on that basis). ***(3)(a)***

The relief or set-off of any loss so computed is then allowed in terms of euro values. The rate of exchange to be used is the average exchange rate for the period in which the loss relief is being allowed (that is, the rate of exchange for the period in which the set-off is being allowed). In practice, since the loss relief is being allowed against euro amounts it may be necessary to work back from the amount of euro loss relief required to the amount of functional currency loss relief available to be claimed – although this may appear to reverse the sequence set out in ***paragraphs (a)*** and ***(b)***.

The situation where the functional currency of a company changes is addressed. It should be noted that there is no question of the effect of any loss relief which was set off in an accounting period of the former functional currency of the company being revised. Any such set off is not to be disturbed. However, for the purposes of computing set-offs in accounting periods for which the new functional currency applies, losses computed and relief given in the terms of the former functional currency must be translated into the current functional currency. That translation is to be made at the average of the representative rates of exchange for the 2 currencies for the period in which the loss was incurred. ***(3)(b)***

***Subsection (4)*** applies to companies whose leasing activities are charged to tax under Case IV of Schedule D. ***(4)***

Where a company makes a claim for loss relief under ***section 399(1)***, the losses are to be computed in terms of the company's functional currency. The relief or set-off for any losses so computed is then allowed in terms of the corresponding euro value. The rate of exchange to be used in the conversion is the average exchange rate for the period in which the loss relief is allowed. ***(4)(a)***

This deals with situations where the functional currency of a company changes. For the purpose of computing set-offs in accounting periods for which the new currency applies, any losses computed and, relief given, in the former functional currency should be ***(4)(b)*** translated into the current functional currency. The translation is to be made at the average of the representative rates of exchange of the two currencies for the period in which the loss was incurred.

**Example 1**

Company A incurs a trading loss of US$300,000 in the accounting period ended 31 December 2020 when the exchange rate is €1: US$1.40. ***(3)(a)***

Company A makes a claim for relief under ***section 396(2)*** against profits (investment income) of €100,000 for the accounting period ended 31 December, 2020 and €50,000 for the accounting period ended 31 December, 2019 (when the exchange rate was €1 : US$1.33

The set-off required for 2020 is €100,000 x 1.40 = US$140,000.

The set-off required for 2019 is €50,000 x 1.33 = US$66,500.

Total amount of loss utilised ($140,000 + $66,500) is $206,500.

The balance of loss relief to be carried forward is US$93,500 (US$300,00 – (US$140,00 + US$66,500)).

**Example 2**

Company A incurs a trading loss of $300,000 in the accounting period ended 31 December 2019 when the exchange rate is €1 : US$1.33

In the accounting period to 31 December 2020 Company A has trading income of €500,000 from the same trade when the exchange rate is €1 : US$1.40.

A ***section 396(1)*** claim will yield loss relief of €214,285. The €1 : US$1.40 rate, being the exchange rate of the period of set-off, is used (rather than €1 : US$1.33 rate, being the rate of the period in which the loss was incurred, which would yield loss relief of €225,564).

**Example 3 - Change in functional currency**

From the accounting period ended 31 December 2017 to the accounting period ending 31 December 2019 the functional currency of Company A was €. ***(3)(b) & (4)(b)***

For the accounting period ending 31 December 2020 the functional currency of Company A changed to the US$.

Company A incurs a loss of €500,000 in accounting period to 31 December, 2017 when the average of representative rates of exchange is €1 : US$1.37. Company A obtained the following relief for that loss.

| | |
|---|---|
| A.P. to 31/12/2018 | €100,000 |
| A.P. to 31/12/2019 | €200,000 |

In computing loss relief due for A.P. to 31/12/2020 the loss is expressed as US$685,000.

The prior claims are treated as US$137,000 for A.P. to 31/ 12/2018 and US$274,000 for A.P. to 31/12/2019. These translations are made by reference to the average exchange rate for the period in which the loss was incurred (i.e. €1 : US$1.37).

Accordingly, Company A has US$274,000 ((US$685,000 – (US$137,000 + US$274,000)) unused loss relief at the beginning of A.P. to 31/12/2020.

Company A has trading income from the same trade of €100,000 in A.P. to 31/12/2020 which has been translated at €1: US$1.33.

The €100,000 loss relief claimed under ***section 396(1)*** will be translated at the rate of the period of set-off (that is €1: US$1.33) into US$133,000.

The balance of loss relief carried forward will be US$141,000 (US$274,000 – US$133,000).

# 403 Restriction on use of capital allowances for certain leased assets

## Summary

This section ring-fences the leasing of machinery or plant so that, where it is carried on in conjunction with other activities (for example, a banking business), capital allowances on leased machinery or plant can be set off only against leasing income and not against any other income/gains. Where leasing is carried on by a company in a group of companies capital allowances on leased machinery or plant are not allowed to create losses for the purposes of group relief. However, where a business consists primarily of leasing the leasing ring fence is eased to provide a wider range of income against which leasing capital allowances and losses can be offset.

The restrictions do not apply in the case of —

- machinery or plant leased for use by the lessee for the purposes of manufacturing activities (this exception, however, does not apply in the case of a qualifying shipping trade – see ***section 407(6)***) or in exempted trading operations at Shannon Airport, and
- leased films the making of which was assisted by the Irish Film Board.

The restrictions are effective from 25 January, 1984 but do not affect the set-off of expenditure incurred on machinery or plant under a leasing contract entered into before that day or during a grace period of approximately one month after that day. The section also contains an ancillary provision which eliminates a tax avoidance device, based on isolated leasing transactions, whereby individuals or companies sheltered non-leasing income from tax.

## Details

### *Definitions and construction*

"chargeable period or its basis period" has the same meaning as in ***section 321(2)***, that is, the period (accounting period for corporation tax and basis period for income tax) by reference to which capital allowances are granted. Any such period which ends on or after 25 January, 1984 may be subject to the restrictions imposed by this section. ***(1)***

"lease adjacent activities" refers to sources of income or profits of corporate lessors (other than lease rental income) that excess specified capital allowances may be offset against (listed in ***clauses (II) to (V) of paragraph (d)(ii)***)

"the specified capital allowances" identifies the capital allowances which are subject to the restrictions provided for in this section. The allowances affected are, broadly, capital allowances in respect of machinery or plant provided for leasing on or after 25 January, 1984.

"trade of leasing" identifies the leasing activities which may be affected by the section; these are —

- any trade which consists wholly of the leasing of machinery or plant, or
- where a trade includes such leasing, the leasing part of the trade, which is treated as a separate trade by virtue of ***subsection (2).***

Leasing includes —

- the letting or charter of ships or aircraft (except the chartering of ships in the course of a trade of operating ships), and
- letting machinery or plant on hire.

The broad interpretation of leasing is designed to ensure (where tax case law might not so rule) that all of the activities that would be carried on by a person whose only business is leasing and hiring of machinery or plant are included in that person's trade of leasing.

This broad interpretation of leasing is modified with respect to the letting on charter of a ship by a company in the course of a trade of operating ships. Without this modification, in the case of a genuine trade of operating ships, certain kinds of chartering which are in fact part of a trade or are genuinely ancillary to the trade would be removed from the ambit of the trade for capital allowances purposes.

In such cases there is no question of denying the normal offset of capital allowances to such a trade in respect of ships let on spot or voyage charter or on time charter. These are in fact normal features of a ship operator's trade. Bare-boat charter would also be so treated where it is ancillary to such a trade.

Accordingly, in the case of a company carrying on a trade of operating ships, any chartering of ships by the company which under the normal rules relating to Case I of Schedule D would be treated as part of that trade (and not, for example, as a leasing activity chargeable under Case IV of Schedule D) are to continue to be so treated despite this section.

***Leasing business of a company and leasing business group***

The range of income against which specified capital allowances on leased machinery or plant can be offset in the case of a business that consists primarily of leasing of machinery or plant is expanded in the case of certain corporate lessors. Such lessors can offset allowances against the profits or their own *leasing business* or the *leasing business profits* of the *leasing business group*. ***(1)(d)***

How a company is affected by these ringfence rules is identified by reference to their activities and/or the activities of their wider group.

In order to avail of this broadened ringfence, the company's activities must consist wholly or mainly of leasing. This means that more than half of the activities must be lease rental activities. This condition can be met by ***(1)(d)(i)***

- the company itself (***Clause (I)***),
- the company, all companies of which it is a 75% subsidiary and its 75% subsidiaries – where all companies are resident in the State (***Clause (II)***),
- the company, all companies of which it is a 75% subsidiary and its 75% subsidiaries – where all are resident in a territory for the purposes of a tax corresponding to corporation tax (***Clause (III)***), and

the members of its corporate tax group for group relief purposes (within the meaning of ***section 411(1)***) (***Clause (IV)***)

In addition, not less than 90 per cent of the activities of the company itself must consist of leasing activities or activities that are leasing adjacent as set out in ***clauses (II)*** to ***(V)***. That is, not less than 90 per cent of the company's activities must consist of a combination of the following: ***(1)(d)(ii)***

- the leasing of machinery or plant (***Clause (I)***);

- the provision of finance and guarantees to fund the type of assets that are leased by the company (***Clause (II)***);
- the provision of finance to an intermediary member of the leasing business group who carries on financing activities referred to in ***Clause (II)*** where:
  - the ***Clause (II)*** activity is provided to a company carrying out lease rental activity within the meaning of ***Clause (I)***,
  - the finance provided to the intermediary member by the company was sourced from an unconnected third party source, and
  - the finance provided is repaid on disposal of the leased machinery or plant.
- the provision of leasing expertise in relation to the type of assets that are leased by the company (***Clause (III)***);
- the disposal of machinery or plant acquired in the course of its leasing trade (***Clause (IV)***);
- the disposal of the right to acquire machinery or plant (or an interest in same) similar to that leased by the leasing business group which was intended to be used by that group for lease rental purposes (***Clause (IVA)***);
- the disposal of any part of an item machinery or plant by the company that was previously used by that company for lease rental purposes (i.e. parting out activities) (***Clause (IVB)***);
- activities ancillary to those listed above ***Clause (V)***).

Where the activities meet the above conditions, they will be regarded as part of the *leasing business* and profits of the leasing business shall refer to the profits arising form these activities. Income from leasing short life assets which has been computed by reference to accounting principles in accordance with section 80A does not form part of the leasing business. ***(1)(d)***

A company forms a leasing business group with the companies who are (or could be) relevant to determining its status as a leasing business (i.e. the grouping in ***paragraph (d)(i)*** (in ***Clause (II), (III), or (IV)***) that the company used to determine the scope and scale of its leasing business – a company may not form a leasing business group where the grouping does not *wholly or mainly* carry on the actual leasing of machinery of plant). ***(1)(e)***

***Treatment of leasing as separate trade***

Where leasing of machinery or plant is carried on as part of a trade by a company or an individual (that is, such leasing and other activities constitute a single trade), the leasing activities are to be treated for tax purposes as a separate trade and the profits arising from those activities are to be assessed separately. The purpose of this separation is to prevent the automatic set-off of capital allowances on leased assets against the general profits of the trade (including non-leasing profits) which would otherwise be available where such leasing forms a part of a wider business. The provision is particularly relevant to leasing activities which form part of the general trade of banks or similar financial institutions. ***(2)***

Where the income of a company which is otherwise wholly engaged in the carrying on of a trade of leasing includes small amounts of non-leasing income which are merely incidental to the carrying on of the leasing trade, it is not necessary to make any apportionments of profits or to make any restrictions of capital allowances under this section. In general, the purpose of the section is to prevent the avoidance of tax on significant amounts of non-leasing income by the use of tax-based financing. Inspectors need not enter into time-consuming restrictions or correspondence in relation to minor amounts of other income which may arise in the course of a genuine leasing trade.

Having, for the purpose of computing taxable profits or losses, isolated leasing and the associated capital allowances, it is then possible, as is provided for in ***subsections (3)*** and ***(4)*** to prevent the excess of capital allowances on leased assets over leasing income being set off against other income.

The separate trade treatment is not, however, to imply a different commencement or cessation of the leasing trade from the commencement or cessation of the general trade of which it is a part.

Any necessary apportionments of the receipts and expenses of a trade that includes leasing activities can be made for the purpose of isolating the profits attributable to leasing.

For example, where leasing is carried on as part of a banking business, it will be necessary to apportion expenses between the gross income from leasing and the gross income from the rest of the banking business to arrive at the net income in each case. Thus, a portion of the overheads, funding costs, etc of the whole business (including leasing) will be identified as attributable to the leasing activity and these will be deducted from the lease rentals received to arrive at the net leasing income. The "specified capital allowances" will be allowed to be set off only against that leasing income.

Lease adjacent trading activities may be included as part of the trade of leasing in scenarios where the leasing and lease adjacent activities would have formed a single trade, but for the existence of subsection (2). This provision intends to prevent artificial demarcations arising within in a single trading entity. For example, a trading leasing company which earns both lease rental income and service fee income, associated with the same leasing business in the course of its trade, will be treated as having a single trade. ***(2A)***

### *Ring-fencing of non-corporate traders*

A loss for tax purposes sustained in a trade of leasing by a non-corporate trader cannot, to the extent that it is attributable to specified capital allowances, be set off against any profits/gains other than profits/gains from the trade of leasing. In effect, a ring-fence is constructed for tax purposes around the leasing trade and the specified capital allowances are to be confined within that ring-fence. ***(3)(a)***

Under ***sections 381*** and ***382*** capital allowances for a year of assessment, where they exceed the profits/gains of the trade against which they are claimed, may be treated as trading losses and relieved against any profits/gains of the year of assessment. Thus, surplus capital allowances of a trade of leasing could, in effect, be set off (apart from this section) against any other profits/gains of the year for which the allowances are due.

The set-off of surplus capital allowances is not available in the case of specified capital allowances. This is achieved by providing that a loss sustained in a trade of leasing, in so far as it is attributable to such specified capital allowances, is for the purposes of ***subsections (1)*** and ***(3)(b)*** of ***section 381*** treated as reducing profits/gains of the trade of leasing only. Under ***section 381(1)*** the loss would, but for this subsection, be available against any income.

**Example**

An individual carrying on a trade of leasing has the following income and capital allowances for the year 2002 for the purposes of income tax —

| | |
|---|---|
| Lease rentals less expenses | €5,000 |
| Specified capital allowances on leased machinery | €15,000 |
| Investment income | €10,000 |

But for this section the excess (€10,000) of capital allowances over lease rentals (€15,000-€5,000) could be claimed as a loss against the investment income of €10,000, thus reducing taxable income for the year 2002 to NIL. By virtue of ***subsection (3)(a)***, the excess (€10,000) of the specified capital allowances over the leasing income is not allowed, as would otherwise be the case under ***sections 381*** and ***392***, to be set off against any other income of the year 2002. Instead, the surplus is available for set-off only against leasing income for the year 2003 and subsequent years.

A non-corporate trader carrying on a leasing trade may be able to avail of specified capital allowances and also of other capital allowances (for example, on leasing machinery which is grant-aided or which was provided for leasing before 25 January, 1984) in the year of assessment or he/she may have incurred an actual trading loss (because his/her expenses exceed his/her leasing income) in the year of assessment. In such a case maximum advantage can be taken of the capital allowances other than the specified allowances, or of the actual trading loss, in computing the amount of a loss to be relieved under ***section 381***. ***(3)(b)(i)***

Under ***section 393*** capital allowances must, before being used to create a loss, be used to cover a balancing charge. In such a case, only the amount of capital allowances in excess of such a balancing charge can be used for the purposes of a loss relief claim under ***section 381***.

Any specified capital allowances in respect of the trade of leasing are to be treated as covering any such balancing charge in respect of that trade so that the maximum amount of any capital allowances other than the specified allowances can be used for a loss relief claim against non-leasing income. Thus, the limitation imposed by the balancing charge will be attributed primarily to the allowances (the specified capital allowances) which, because of this section, cannot be treated as available for relief against income other than non-leasing income.

**Example**

An individual carrying on a trade of leasing has the following capital allowances and balancing charges for the year 2002 for the purposes of income tax —

| | |
|---|---|
| Balancing charge on machinery disposed of | €6,000 |
| Capital allowances on leased machinery | |
| (i) specified capital allowances | €9,000 |
| (ii) other capital allowances | €3,000 |

There is a surplus of €6,000 of capital allowances over balancing charges. This surplus is available for set-off against other income except to the extent that it includes specified capital allowances. By virtue of ***subsection (3)(b)(i)***, €6,000 of the specified allowances of €9,000 is treated as set off against the balancing charge of €6,000. Therefore, the surplus of allowances over charges of €6,000 is regarded as including only €3,000 of the specified allowances and that surplus is reduced to €3,000 for the purpose of a loss relief claim against non-leasing income. Thus, the "other" (not "specified") allowances of €3,000 can be used, to the maximum possible extent, by way of a loss relief claim against other income.

A degree of flexibility is provided for with regard to the order in which — ***(3)(b)(ii)***

- actual losses incurred in a trade of leasing (that is, an excess of expenses over lease rentals),
- specified capital allowances, and
- other capital allowances,

may be relieved against leasing income and non-leasing income under ***sections 381*** and ***392***.

***Section 392(2)*** provides that where an actual trading loss, together with capital allowances, is the subject of a loss relief claim under ***section 381*** and the aggregate loss (that is, including the capital allowances) cannot be fully relieved, then the relief is to be treated as being given to the maximum extent possible in respect of the actual trading loss before being given in respect of the capital allowances. Because of the restrictions imposed on the extent to which specified capital allowances of a trade of leasing can be used for the purpose of loss relief, the priority established by ***section 392(2)*** could be unduly restrictive. Thus, it is provided that a claimant for loss relief under ***section 381*** may specify the extent to which the relief is to be attributed to the loss (if any) actually sustained in the trade of leasing, the specified capital allowances or any other capital allowances.

### *Ring-fencing of corporate traders*

The ringfence for corporate traders affects "relevant leasing losses." Relevant leasing losses are those attributable to specified capital allowances arising in the course of a trade. ***(4)(a)***

The "the relevant amount of the loss" refers to the amount of losses that are subject to the ringfence restriction. ***(4)(b)***

The amount may be the full amount of the loss in circumstances where:

- there is no actual trading loss (before capital allowances) and
- there are no capital allowances other than specified capital allowances.

This means that, (some part of) the specified capital allowances has been effectively set off against an actual trading profit to create the loss (in such a case the tax loss has been created entirely by treating specified capital allowances as trading expenses by virtue of ***section 307***).

In other circumstances, however, an amount less than the whole of the tax loss will be restricted. Where:

- no capital allowances other than the specified capital allowances are taken into account in arriving at the tax loss, and
- there is also an actual trading loss and the amount of the tax loss is greater than the total amount of the specified capital allowances,

then the restrictions will apply only to the total amount of the specified capital allowances.

Where the tax loss does not exceed the amount of the capital allowances which are not to be restricted (that is, capital allowances other than the specified capital allowances) no restriction is to be made.

**Example 1**

Where there is no actual trading loss and there are no capital allowances other than specified capital allowances, the restriction applies to the full amount of the loss —

| | |
|---|---|
| Trading profits of leasing trade | €100 |
| Specified capital allowances | (€300) |
| Loss | (€200) |

Here, the specified capital allowances are allowed, as to €100, to offset the €100 leasing income and the balance of €200 is restricted. None of the provisions of ***subsection (4)(b)*** would operate to give a lesser restricted amount.

**Example 2**

Where there is an actual trading loss and there are no capital allowances other than specified capital allowances, the restriction applies only to the amount of the specified capital allowances —

| | |
|---|---|
| Trading loss of leasing trade | (€50) |
| Specified capital allowances | (€100) |
| Loss | (€150) |

The full amount (€100) of the specified capital allowances is subject to restriction, because it is less than the whole loss of €150.

**Example 3**

There is no actual trading loss but there are both specified capital allowances and other capital allowances —

| | | |
|---|---|---|
| Trading profit of leasing trade | | €100 |
| Specified capital allowances | (€500) | |
| Other capital allowances | (€200) | (€700) |
| Loss | | (€600) |

In this case €100 of the €500 specified allowance is, in effect, set off against the €100 profit and the restriction applies not to the whole loss of €600 but only to the amount (€400) by which the loss (€600) exceeds the other capital allowances (€200). No restriction applies to the other €200 of the €600 loss, that is, an amount equal to the other ("unspecified") allowances.

**Example 4**

There is an actual trading loss and there are both specified and other capital allowances —

| | | |
|---|---|---|
| Trading loss of leasing trade | | (€150) |
| Specified capital allowances | (€450) | |
| Other capital allowances | (€100) | (€550) |
| Loss | | (€700) |

In this case the whole of the specified capital allowance is restricted (€450) rather than the full loss of €700.

**Example 5**

Where the loss is less than or equal to the "unspecified" capital allowances, no amount of the loss falls to be restricted in such a case. For example —

| | | |
|---|---|---|
| Trading profit of leasing trade | | €500 |
| Specified capital allowances | (€400) | |
| Other capital allowances | (€200) | (€600) |
| Loss | | (€100) |

No part of the €100 loss is restricted because the specified capital allowances (€400) can be fully absorbed by the leasing profits (€500). In this case the loss (€100) is less than the other capital allowances.

**Example 6**

| | | |
|---|---|---|
| Trading profit of leasing trade | | €500 |
| Specified capital allowances | (€500) | |
| Other capital allowances | (€100) | (€600) |
| Loss | | (€100) |

Again, no restriction applies because the loss is equal to the other capital allowances. The trading profit (€500) is capable in this case also of absorbing the full specified capital allowances (€500).

The non-application of the restriction would not apply if the loss exceeded the other capital allowances because the trading profit would not, in that case, have absorbed the whole of the specified capital allowances so that some part of the loss would fall to be restricted.

### *Utilisation of relevant amount of restricted losses*

Where a company incurs a 'relevant leasing loss' the 'relevant amount of the loss' shall only be available for relief under— ***(4)(c)***

- ***section 396A*** (relief for relevant trading losses) insofar as they can be used to reduce the income of the company's leasing business
- ***section 396B*** (relief for certain trading losses on a value basis) insofar as they can be used to reduce the corporation tax chargeable on the profits of the company's leasing business
- ***section 420A*** (group relief: relevant losses and charges) insofar as they provide group relief for either:
    - trading lease rental income, or
    - trading income of the leasing business of a member of the company's leasing business group.

***section 420B*** (group relief: relief for certain trading losses on a value basis) insofar as they can provide group relief to reduce the corporation tax chargeable on the profits of the leasing business of a member of the company's leasing business group.

### *Ring-fencing of non-trading leasing income*

Restrictions are imposed on the set-off of capital allowances on leased machinery or plant which, though the subject of a lease arrangement, is not leased in the course of a trade of leasing. For example, an individual or a company can purchase an item of machinery or plant and lease it to another person. The rentals received would be subject to tax under Case IV of Schedule D and the lessor would be entitled to the usual capital allowances against the rentals. ***(5)***

This provision ensures that capital allowances on machinery or plant purchased on or after 25 January 1984 (or 1 March 1984 where the ***subsection (6)(b)*** applies) provided for leasing, otherwise than in the course of a trade of leasing, are generally available for set-off only against the rentals received from the lease and not against any other income.

Where a corporate lessor has specified capital allowances arising from non-trading leasing activities, these allowances may be offset against leasing business profits. Such non-trading allowances are now available for—

- relief against other leasing business profits in that company, and
- group relief against:
    - lease rental profits, or
    - the profits of the leasing business of a member of the company's leasing business group.

### *Certain fishing vessels*

The ring-fencing provisions of the section have been relaxed in the case of lessors of certain fishing vessels in the Whitefish fleet. These are vessels on the Register of Fishing Boats and in respect of which Bord Iascaigh Mhara has certified that expenditure has been incurred for fleet renewal purposes in the polyvalent and beam trawl segments of the Irish fishing fleet (see ***section 284(3A)***). ***(5A)***

Where expenditure is incurred within a 6 year period starting on 4 September, 1998 ("the appointed day") capital allowances claimed by corporate lessors in respect of these vessels can be set against other income or profits. Previously, this was a three year period, section 52(2) of the Finance Act 2001 extended it to a 6 year period ending on 3 September 2004. However, because of State Aid considerations and the need to get EU Commission approval for this measure, this extension only takes effect following an order by the Minister for Finance. This order has not yet been made. For individual lessors, the position is the same but only in respect of allowances relating to expenditure incurred in a 2 year period commencing on 4 September, 1998.

***Exclusions (which are obsolete due to the passage of time and the ending of 10% tax regimes)***

The following capital allowances are not subject to any of the restrictions on set-off :

- capital allowances in respect of expenditure incurred before 25 January, 1984, or under contracts which were under negotiation on that date; ***(6)***
  [It is necessary to retain this provision since it is theoretically possible that machinery or plant could yet be provided under a contract entered into before 25 January, 1984 (for example, the machinery or plant for a factory might be provided in phases over a period of years under a single contract negotiated and agreed before the first phase).]
- capital allowances on machinery or plant (not being either or both a film negative and its associated soundtrack, or a film tape or film disc) provided for leasing the cost of which has been grant-aided by the IDA, the Shannon Free Airport Development Co. Ltd or Údarás na Gaeltachta and on leased films assisted by the Irish Film Board. Except for films assisted by the Irish Film Board, this exception does not apply as respects machinery or plant provided for leasing as on and from 13 May, 1986 (“pipeline” cases had until 31 August, 1986 to finalise contracts); ***(7)***
- capital allowances on machinery or plant provided for leasing by a lessor to a lessee in the course of the carrying on by the lessor of relevant trading operations in the Shannon Airport Area or the International Financial Services Centre (IFSC). In order for this exception to apply, however, claims for capital allowances in respect of such machinery or plant must be confined to standard wear and tear allowances. This exception is not to apply to machinery or plant in respect of which a claim for accelerated capital allowances (either by way of an initial allowance or free depreciation) has been, or will be, made; ***(9)(b)***
- capital allowances on machinery or plant provided for leasing from 13 May, 1986 for use by a lessee in a “specified trade” (that is, a manufacturing business or exempted trading operations in the Shannon Airport Area). Such machinery or plant is, in effect, exempted from the restrictions imposed by this section. The machinery or plant must be subject to a lease which includes an undertaking by the lessee that the machinery or plant will be used during a period of at least 3 years for the purposes of the lessee’s “specified trade”. This is the general position in the case of machinery or plant provided before 4 March, 1998. Where machinery or plant is provided on or after that day, there is a further stipulation if ring-fencing is not to apply. This requires that the machinery or plant cannot be used for the purposes of any other trade as, for example, would be the case if the machinery or plant were leased onwards by the lessee. The situation where machinery or plant could be seen as being used for the purposes of the “specified trade” of a lessor solely by virtue of the fact that the lessor has leased the machinery or plant to the lessee is catered for.

Notwithstanding the deletion of ***sections 445*** and ***446*** the references to plant or machinery referred to in ***subsection (8)*** are preserved and this section applies with any modifications necessary to give effect to this subsection. ***(8A)***

A “specified trade” is a trade which consists wholly or mainly of — ***(9)(a)***

- manufacturing, including certain activities deemed to be manufacturing for the purposes of the 10 per cent scheme of corporation tax – see ***section 443*** (This exception, however, does not apply in the case of qualifying shipping – ***section 407(6)***), or
- exempted trading operations in the Shannon Airport Area.

Where a trade includes other activities it is to be treated as consisting "wholly or mainly" of the qualifying activities during a "relevant period" if 75 per cent of sales revenue comes from such activities (the "relevant period" is a period of 3 years during which the lessee will have undertaken to use the leased machinery or plant for the purposes only of the specified activities). ***(9)(c) & (d)***

The lease must not be a lease between "connected persons". This is necessary to prevent arrangements aimed merely at tax avoidance. If the lessee fails to fulfil such an undertaking, any relief from tax given to the lessor (for example, group relief for losses) because the capital allowances on the leased machinery or plant were not subjected to the restrictions imposed by this section may be recovered by an assessment on the lessor. Provision is made for the usual right of appeal to the Appeal Commissioners against such an assessment made by an inspector.

Excluded from this provision is machinery or plant provided for leasing before 13 May, 1986 or before 1 September, 1986 under contracts under negotiation before 13 May 1986. Such machinery or plant, if grant-aided, has the benefit of ***subsection (7)***. Otherwise it is subject to the restrictions imposed by this section. ***(9)(e)***

An obligation is treated as having been entered into before a particular date where, in effect, a binding contract in writing had existed before the particular date and the lessor's obligation to incur expenditure on the machinery or plant arose out of the contract. ***(10)(a)***

By negotiations being in progress before a particular date between the lessor and lessee is meant, in effect, preliminary commitments or agreements having been entered into between the parties on or before that date. ***(10)(b)***

***Reporting obligations***

Companies affected by the restrictions in ***subsections (4) and/or (5)*** will be required to provide the following information in their annual corporation tax return: ***(11)***

- the specified capital allowances claimed in a period, including:
  - the amounts arising, whether from a trade or otherwise, and
  - any balancing events relating to specified allowances that have arisen in that period,
- relevant leasing losses carried forward from a previous period under ***section 396(1)***
- relevant leasing loss claims under ***sections 396(1), 396A* or *396B*** made in the period
- relevant leasing loss surrenders under ***sections 420A* and *420B*** - including details of who the losses were surrendered to and on what basis the surrender qualified for relief,
- specified capital allowance claims under ***section 308(4)***,
- specified capital allowance surrenders under ***section 420(4)*** - including details of
  - who the losses were surrendered to and
  - the basis on which the surrender qualified for relief, and
- chargeable gains arising on the disposal of leased plant and machinery assets and details of any appropriations into trading stock.

## 404 Restriction on use of capital allowances for certain leased machinery or plant

### Summary

This section prevents an unintended use of the capital allowances regime in relation to certain leases of plant and machinery.

Certain leases of plant and machinery were structured in a manner designed to allow accelerated allowances in the early stages of a lease while postponing the taxation of lease receipts until the end of the lease. The result was that the lessor was able to use the accelerated capital allowances to shelter taxable income arising from other activities.

In the case of a long lease, the lease is effectively a loan. The lessor provides an asset costing, say, €1,000. The lease payments over the lease period amount only to the equivalent of interest on a loan of €1,000 (that is, about €80 per annum). At the end of the lease period a payment equal to the cost of the asset is made to the lessor. As a result capital allowances of €1,000 or €500 (depending on circumstances) could, but for this section, be taken in year 1 while the €1,000 receipts would not be taxed until the end of the primary leasing period. The section prevents this Exchequer cash flow loss by ring-fencing capital allowances on leased machinery or plant to income from the particular lease concerned. This ring-fence applies unless the lease meets certain conditions. As a general rule the ring-fence applies unless the lease payments are spread evenly throughout the primary lease period. In a 10 year lease, for example, one could expect to see 1/10th of the total lease payments received and taxed by the end of year 1, 2/10ths of total lease payments received and taxed by the end of year 2 and so on. The section allows some flexibility by requiring 91 per cent satisfaction of such a requirement in year 1, 92 per cent in year 2, 93 per cent in year 3 and so on.

Special rules are provided in the case of long leases of plant and machinery used for certain grant-aided projects (those in respect of which "***section 130***" funding remains available). Under these rules, the ring-fence does not apply despite the fact that, in the first 3 years of a lease which has a primary leasing period of 10 years or more, the only lease payments made are the equivalent of interest payments on the original cost of the asset. However, in such a case there has to be a pure even spread of payments over the remaining part of the primary lease period.

The section allows for restructuring of leases provided that it can be shown that the restructuring is carried out for bona fide commercial reasons. If, however, leases are restructured to take advantage of any benefits which may be provided by the section and not for bona fide commercial reasons, the ring-fence applies. Similarly, if arrangements are made for the sale and leaseback of any machinery, other than new machinery, the ring-fence applies unless there is a pure even spread of lease payments in the primary lease period.

The section does not apply to leasing in the course of an International Financial Services Centre (IFSC) or Shannon trade. In addition, short leases of assets costing up to €63,500 which involve regular annual payments with no backloading need not be subjected to the detailed tests set out in the section.

### Details

***Definitions***

"agricultural machinery" is machinery or plant — ***(1)(a)***

- which is used for the purposes of a farming trade, or intended to be so used, or

- used for the purposes of a trade carried on by an agricultural contractor or intended to be so used.

“asset” is machinery or plant. The section does not, therefore, apply to buildings.

“fair value” is essentially the cost price of the asset on the arm’s length basis at the inception of the lease.

“inception of the lease” is the earlier of the date on which the asset is brought into use or the date from which lease payments first accrue.

“lease payments” are the payments made under the lease and includes any payment made at or after the end of the lease period where the payment is guaranteed by the lessee or a person connected with the lessee. If the payment is guaranteed by a third party who is not connected with the lessee, the payment is not to be regarded as a lease payment unless the guarantee is part of an arrangement between the lessee and any other person.

“predictable useful life” is the useful life of the asset as estimated at the inception of the lease on the assumption that there will be normal usage of the asset.

“relevant lease payment” is the amount of a lease payment to be made under the terms of the lease. In certain cases it may not be possible to determine the amount of a lease payment because the lease provides for variable amounts which cannot be determined at the inception of the lease. A mechanism to determine the lease payments is provided which requires that, if lease payments are to be determined by reference to EURIBOR (the European Inter Bank Offered Rate) or a similar rate, the payments under the lease are to be calculated as if the particular rate which applies at the inception of the lease does not change. In this way it will be possible to determine at inception of the lease whether or not the lease falls foul of the section.

“relevant lease payments related to a chargeable period or its basis period” are relevant lease payments which are received in the period concerned and which are taxable in that period or in an earlier period. Where payments are anticipated on the assumption of interest rates, the test as to whether payments are taxable is applied as if the anticipated payments were the actual payments to be made.

“relevant period” is the period beginning at the inception of the lease and ending when the lessor has recovered 90 per cent of the investment in the asset. If, however, the relevant period is determined at more than 7 years, the relevant period is to be recalculated on the basis that it is the period in which 95 per cent of the lessor’s investment is recovered. In order to avoid a situation where taxpayers would seek to extend the relevant period by spreading payments over an unacceptably long period, it is provided that the relevant period will end at the end of the predictable useful life of the asset if that is earlier than the time at which the appropriate proportion of the lessor’s investment in the asset is recovered.

It is necessary to define relevant period in this way because the lease period can extend indefinitely in the case of a finance lease where the lessee is allowed continued enjoyment of the asset. In addition, the concept of the recovery of the lessor’s investment is borrowed from SSAP21 and should be understood by accountants and advisors.

The recovery of the lessor’s investment is to be measured as follows. Payments under the lease are taken where the lease specifies the payment. Where the payments are variable, amounts are to be determined using assumed rates. Payments are then to be discounted to their net present value at the inception of the lease. The earliest time at which the cumulative net present value of payments amounts to or exceeds the given percentage of the fair value of the asset (that is, its original cost) is the end of the relevant period. Lease payments are to be discounted at the rate implicit in the lease (that is, the rate which, when applied to all payments under the lease, produces a net present value at inception of the lease which is equal to the cost of the asset at inception of the lease).

The relevant period will not necessarily be the period after which the lease payments will be negligible. There can be substantial amounts payable after the end of the relevant period. The relevant period is simply a defined period in which the primary tests to determine whether a lease is a relevant lease is to be applied.

The notes on ***section 321*** should be consulted for guidance on the meaning of "chargeable period", "chargeable period related to" and "chargeable period or its basis period".

***Relevant leases***

Two tests are to be applied to leases in general to determine whether they are relevant leases. ***(1)(b)***

To avoid being a relevant lease, the cumulative taxable lease payments in an accounting period (where the lessor is a company), or in a basis period (where the lessor is an individual), which falls wholly or partly within the relevant period and in any earlier such accounting period must not be less than the proportion of total lease payments in the relevant period which has expired at that time. Some flexibility on this requirement is permitted by allowing for a gradual rise, on a cumulative basis, from approximately 90 per cent of such a requirement in the early stages of the lease to full satisfaction of the requirement by the end of the primary lease period. ***(1)(b)(i)***

This requirement is set out as a formula:

$$W \times P \times \frac{90 + (10 \times W)}{100}$$

W is the proportion of the primary lease period which has expired, being the period which has expired (E) divided by the length of the relevant period (R). That proportion is applied to the total lease payments (P).

The second part of the formula —

$$\frac{90 + (10 \times W)}{100}$$

relaxes the requirement by allowing the lease not to be treated as a relevant lease if it 90 per cent (approximately) satisfies the test in the early stages of the lease (when very little of the relevant period has expired). That requirement builds up over the relevant period so that at the end of the relevant period the test must be fully satisfied.

Any balance of payments due under the lease, other than an amount which is inconsequential, is to be paid within a given period which begins immediately after the end of the relevant period. In the case of a lease with a relevant period of 7 years or less, the balance must be paid within a period equal in length to 1/7th of the length of the relevant period, or 1 year if that is greater. In the case of any other lease, the balance must be paid within the period equal in length to 1/9th of the length of the relevant period, or 1 year if that is greater.

The rules to be applied to determine whether certain leases of machinery or plant constitute relevant leases are set out. The leases concerned are leases the relevant period of which exceeds 10 years and which concern machinery or plant — ***(1)(b)(ii)***

- provided for the purposes of a special project,
- which is approved for grant aid by the IDA, SFADCo, or Údarás na Gaeltachta,

- which has been included in the special list, prepared by the IDA and approved by the Minister for Industry and Commerce and the Minister for Finance, of projects which qualify for "***section 130***" funding under ***section 133(8)(c)***,
- provided for a project which was approved for grant aid on or before 31 December, 1990 and qualifies for 50 per cent capital allowances by virtue of ***section 283(5)*** or ***285(7)(a)(i)***.

A lease in this category is to be treated as a relevant lease (and the ring-fence applied) unless 3 conditions are met.

The first condition is that in each of the first 3 years of the primary lease period an amount must be paid which is equivalent to interest on what might have been borrowed to finance the purchase of the machinery or plant. Again, this is set down by a formula. The formula is —

- the cost of the machinery or plant,
- multiplied by 80 per cent of the 6 month DIBOR interest rate (that is, $\frac{D}{100} \times \frac{80}{100}$)
- the M / 12 deals with accounting periods of less than 12 months.

The second condition is that in the remaining part of the primary period there must be a pure even spread of lease payments, that is, similar to the general rule except that there is no 90 per cent flexibility.

The third condition is that any outstanding amount at the end of the primary lease period, other than an amount which is inconsequential, should be paid within a period of 1 year immediately after the end of the relevant period. If a lease in this category meets those conditions, it is not a relevant lease and, consequently, capital allowances are not to be ring-fenced.

### *"Inconsequential" concept*

Under a finance lease the lessee pays lease payments in the primary lease period which represent the full cost of the asset plus compensation for the delay in the lessor's recovery of his investment in the asset. In effect, the lessee has acquired the asset at that point and will in general be entitled under the lease to its continued use for an nominal or "inconsequential" amount. An inconsequential amount in respect of relevant lease payments is the nominal payments which may be payable after the primary lease period. This amount is capped by providing that an amount is to be regarded as inconsequential if the discounted present value, at the end of the period in which the balance of lease payments is to be paid, of future lease payments does not exceed 5 per cent of the cost of the asset or, if it is lower, €2,540. The rate to be used in this discounting exercise is the same rate as applies to determine the relevant period. ***(1)(b)(iii)***

### *Non-coinciding accounting periods*

The rules for applying the section to an accounting period which crosses the start or the end of the relevant period or, in the case of "special project" leases, the period of the first 3 years of the period in which a pure even spread is demanded are that such an accounting period is to be split into 2 accounting periods, one before and one after the relevant date and the tests applied to the lease on that basis. ***(1)(b)(iv)***

### *Foreign currency leases*

A lease that is denominated in a foreign currency is not to be regarded as a "relevant lease" and subject to the ring fence by reason only of exchange rate differences. ***(1)(b)(v)***

***Treatment of capital allowances for assets let under relevant leases***

Subject to ***subsection (2A)*** where machinery or plant is let in the course of a trade carried on by the lessor, the letting of the asset under the relevant lease is to be treated as a separate leasing trade separate to any other activities of the lessor, and the restrictions in ***section 403*** are to apply to that separate trade. The effect of the provision is to ring-fence capital allowances on the machinery or plant to income arising from that specific lease. ***(2)***

A similar ring-fence is to be applied to capital allowances (that is, initial allowances made in respect of expenditure incurred on the provision of assets or wear and tear allowances) on lease assets where the leasing is not part of a trade. The set-off of capital allowances against income other than income from the particular lease is prohibited where the set-off would be under —

- ***section 305(1)(b)*** (set-off against non-leasing income in the case of a lessor who is an individual),
- ***section 308(4)*** (set-off against non-leasing income in the case of a lessor which is a company),
- ***section 420(2)*** (set-off against income of fellow-group companies where the lessor is a company).

***Relevant long term leases***

***Definitions***

A "relevant long-term lease" is a lease of an asset that has a predictable life exceeding 8 years. Other expressions have the same meaning as in ***section 80A***. ***(2A)(a)***

***Notional changes***

Where a lease that is a relevant lease is also a relevant long-term lease, capital allowances from the lease may be offset against income from other relevant long-term leases of the company. This is achieved by applying the section subject to a number of notional changes. ***(2A)(b)***

This section will apply as if —

- the single trade of a single relevant lease envisaged in ***subsection (2)*** of this section were a single trade of the relevant long-term lease and any other relevant long-term lease. ***(2A)(b)(I)***
- revised rules for set-off of capital allowances were substituted in ***section 403(4)(a)***. ***(2A)(b)(II)***

The above revised rules would allow capital allowances to be set off as follows:

- against the company's income from the long-term lease concerned (under the notional ***subparagraph (i)(I)*** of ***section 403(4)(a)***);
- in the case of a company whose activities consist mainly of leasing in accordance with ***paragraph (d)*** of ***section 403(1)***, against that company's leasing income and leasing related income as envisaged in ***section 403(1)(d)*** (under the notional ***subparagraph (i)(II)*** of ***section 403(4)(a)***);
- against income of any other relevant long-term lease of the company (under the notional ***subparagraph (i)(III)*** of ***section 403(4)(a)***);
- under group relief against income of a leasing trade carried on by a fellow group company (this repeats what is already in ***section 403(a)(ii)***);
- in the case of a company whose activities consist mainly of leasing in accordance with ***section 403(1)(d)***, against leasing income and leasing related income of a fellow group company (under the notional ***subparagraph (ii)(II)(A)*** of ***section 403(4)(a)***);

- against income of any relevant long-term lease of a fellow group company (under the notional ***subparagraph (ii)(II)(B)*** of ***section 403(4)(a)***).

***Application to agricultural machinery***

Some flexibility is allowed in the case of agricultural machinery whether it is used by a farmer for the purposes of the farming trade or by an agricultural contractor for the purposes of such a contractor's trade. The provision allows the test to be applied to notional lease payments calculated by taking an average of lease payments made in the year concerned and the previous year. This makes some allowance where the lease provides for seasonal payments. ***(3)***

***Restructured leases***

Subject to ***subsection (4A)*** where, in an effort to avail of any flexibility allowed by the section, lessors and lessees restructure leases which are on a straight-line basis or are front-loaded, any lease resulting from such arrangements is to be a relevant lease. ***(4)(a)***

Unless it is shown that any restructuring was carried out for bona fide commercial reasons, restructuring which results in a higher level of payments being payable after any time, as compared with the level which would have been payable at that time, will have the effect of the lease concerned being treated as a relevant lease. This applies where the restructuring involved either —

- a simple alteration of the terms of a lease, or
- where the lessor and the lessee agree to terminate a lease which is replaced by a lease of the same asset between the lessor and lessee or persons connected with each other.

This provision applies to such arrangements made after 11 April, 1994 and treats both the new and the old lease as a relevant lease, even where the original lease commenced before that date. If a lease is to be treated under this provision as a relevant lease, any allowance made which would not have been made in the case of a relevant lease is to be withdrawn.

The mechanism for withdrawing relief is that the withdrawal is made for the chargeable period related to the event giving rise to the withdrawal of the allowance and any such withdrawal is to be made in accordance with ***paragraph (c)***. The chargeable period related to the event means the year of assessment in the basis period for which the event takes place where the lessor is an individual. Where the lessor is a company it is the accounting period in which the event takes place. In addition, it places the responsibility on the lessor who is to suffer the withdrawal of the allowance to include in the tax return for that year both details of the event giving rise to the withdrawal and the amount to be treated as income. ***(4)(b)***

Where relief is to be withdrawn, such amount ("the relevant amount") of allowances as were made to the lessor but which would not have been made if the lease were a relevant lease at the time are to be treated as income of the chargeable period in which the restructuring takes place, subject to that amount being increased by an amount determined by the formula — ***(4)(c)***

$$A \times \frac{R}{100} \times M$$

A is the relevant amount.

R is 0.0273 (the rate at which interest is chargeable on overdue tax).

M is the number of days in the period beginning on the date on which tax for the chargeable period in which the allowance was made was due and payable and ending on the date on which tax for the chargeable period for which the withdrawal of the allowance is to be made is due and payable.

### *Alteration of lease terms*

In certain cases, an alteration to the terms of a lease will not result in the lease being regarded as a relevant lease and, therefore, subject to the ring fence. ***(4A)***

### *Relevant leases*

A lease is treated as a relevant lease if it does not have a fairly even spread of lease payments. An exception to this is a lease that was in place before 23 December 1993. In addition, certain leases were subject to a modified test under ***subsection (1)(b)(ii)*** of this section. Generally, where the terms of a lease which is not a relevant lease are altered, so as to backload payments, the lease will be regarded as a relevant lease. ***(4A)(a)***

Where the terms of a lease entered into before 2 February 2006 and which would be a relevant lease apart from the fact that it was either in place before 23 December 1993 or was subject to the modified text in ***subsection (1)(b)(ii)*** of this section, the lease will not be treated as a relevant lease because of that alteration. ***(4A)(a)(i)***

### *Defeasance payments*

The alteration to the terms of the lease is to be disregarded as respects the tax treatment of any defeasance payments under the lease. ***(4A)(a)(ii)***

However, the tax treatment of the defeasance payment may change if the value of a lease payment, other than a lease payment that is based on a rate of interest, were to be reduced.

The above rules do not apply if the alteration results in a lease payment being made more than 20 years after the time that it would otherwise have been payable. ***(4A)(b)***

### *Sale and leaseback arrangements*

A lease of machinery or plant arising out of a sale and leaseback arrangement is a relevant lease unless the machinery or plant is new or there is a pure even spread of lease payments. The purpose of this is to prevent owners of assets reorganising their affairs so as to obtain any benefits they may see in the new rules and which would involve an Exchequer cost. ***(5)***

These restrictions apply where a person who owned an asset sells the asset and that person or a connected person takes the asset on lease from the person to whom it was sold or a connected person.

New assets are excluded because, for example, a specialist asset which is to be used by a trade may be purchased by the trader and sold to a financial institution for leasing to the trader or a connected person. Commercial realties may dictate that method as the most efficient way to acquire the asset. What the section seeks to prevent is the sale and leaseback of machinery or plant which is carried out principally for the purposes of availing of any tax benefits under the arrangements provided for by this section.

### *Application*

This section applies as on and from 23 December, 1993, (that is, the date of the announcement that the provisions would be introduced). However, excluded from the ambit of the section are — ***(6)(a)***

- leases where before 23 December, 1993 there was a binding contract in writing for the letting of the asset,
- leases, which satisfy the following conditions:
    - the relevant period does not exceed 5 years,
    - the predictable useful life of the leased asset does not exceed 8 years,

- apart from the first accounting period, the cumulative amount of lease payments up to the end of any accounting period equates to annual payments of approximately one-eight of the original value of the asset,

  and

- the lessor has elected to have capital allowances on machinery and plant for a chargeable period calculated by reference to the special method set out ***paragraph (b)***.

***Method of calculating capital allowances***

The special method of calculating capital allowances referred to above concerns capital allowances on machinery and plant that is used in a chargeable period but is not used throughout the chargeable period is set out. The allowances on those assets are to be proportionally reduced on a time basis by reference to the part of the chargeable period throughout which the machinery or plant is used. ***(6)(b)***

## 405 Restriction on use of capital allowances on holiday cottages

### Summary

This section provides restrictions on the manner in which capital allowances on holiday cottages may be set off against income.

### Details

Under ***section 305(1)(b)*** the excess of capital allowances over the income arising from the letting of an industrial building or structure may be set against the total income of an individual taxpayer. Where the taxpayer is carrying on a trade, the capital allowances may be taken into account under ***section 392*** to create or augment a loss in that trade for set-off against the taxpayer's total income. Where the taxpayer is a company, ***sections 308(4)*** and ***396*** provide for the set-off of the capital allowances in a similar manner. ***Section 420(2)*** provides for group relief in respect of trading losses in respect of capital allowances; and ***section 381*** provides for relief for any individual carrying out a trade or profession who sustains a loss in relation to that trade or profession. ***(1)***

This section provides, however, that, subject to ***subsections (2)*** and ***(3), sections 305(1)(b)*** and ***308(4)*** and ***420(2)*** will not apply in relation to any capital allowance given in respect of capital expenditure incurred on or after 24 April 1992 on a building or structure which is an industrial building or structure by virtue of being a holiday cottage. In addition, ***sections 381*** and ***396(2)*** will not apply as respects the whole or part of any loss which would not have arisen but for any such capital allowance. If an amount of loss would arise without taking account of the capital allowances the section does not prevent the set-off of that amount of the loss.

The restrictions in this section do not apply to capital allowances in respect of expenditure incurred in the period up to and including 5 April 1993 on a holiday cottage (within the meaning of ***section 268***) where either — ***(2)***

- a binding contract in writing for the construction of the holiday cottage had been entered into before 24 April 1992, or
- both a binding contract in writing had been entered into before 24 April 1992 for the purchase or lease of land for the purposes of constructing a holiday cottage and a planning application for the construction of the holiday cottage had been received by a planning authority before that date.

Also, in addition to the above, the restrictions in this section do not apply to capital allowances in respect of expenditure incurred on a building used as a holiday cottage ***(3)*** which is comprised in premises first registered on or after 6 April 2001 in a register of approved holiday cottages established by the National Tourism Development Authority (trading as Fáilte Ireland) under Part III of the Tourist Traffic Act, 1939, where prior to the premises becoming so registered —

- the building was a qualifying premises within the meaning of ***section 353***, by virtue of being a listed holiday cottage under section 9 of the Tourist Traffic Act, 1957, and
- the provisions of ***section 355(4)*** did not apply to restrict allowances for the expenditure incurred on the acquisition, construction or refurbishment of that building or structure, by virtue of ***section 355(5)*** (***section 355(4)*** ring fences capital allowances in respect of buildings or structures covered by that section but ***section 355(5)*** sets this aside in certain circumstances).

## 406 Restriction on use of capital allowances on fixtures and fittings for furnished residential accommodation

This section outlines restrictions on the use of capital allowances for capital expenditure on fixtures and fittings in furnished rental residential accommodation. Where a person incurs such expenditure in respect of a house used solely as a dwelling which is let as a furnished house on bona fide commercial terms (i.e. ***subsection (7)*** of ***section 284*** applies), and an allowance is to be made in respect of that expenditure under that section, ***sections 305(1)(b)***, ***308(4)*** and ***420(2)*** shall not apply as respects that allowance.

## 407 Restriction on use of losses and capital allowances for qualifying shipping trade

### Summary

This section prevents the set-off of losses or capital allowances arising in respect of a shipping trade against non-shipping income, and as respects leasing, ensures that where a ship is leased for use in a shipping trade the capital allowances in respect of that ship can only be set against the income arising under that lease, but not against other leasing income. Subject to certification by the Minister of the Marine and Natural Resources, capital allowances and losses may be offset against all leasing income in certain circumstances.

### Details

***Definitions***

"lessee" includes the successors in title of a lessee of a ship. ***(1) & (2)***

"qualifying ship" is a seagoing vessel which —

- has majority Irish ownership or is leased from a foreign lessor without crew,
- complies with all the requirements of the Merchant Shipping Acts, including Irish standards as to ship safety and the manning of such ships with seafarers having Irish Certificates of Competency or Certificates recognised as equivalent by the Irish Authorities, and
- is of adequate size to engage in reasonable commercial operations with a modern means of propulsion.

However, whether or not the above criteria are satisfied, fishing trawlers (other than a factory ship which would otherwise be treated as a fishing vessel), tugs (other than certain ocean-going tugs), dredgers, floating rigs, working platforms of any kind, and vessels used for servicing offshore installations such as oil-rigs, platforms, factory ships and the like, are not treated as qualifying ships. Also excluded is any other vessel, not specified above, which is of a type not normally used for "qualifying shipping activities".

"qualifying shipping activities" are trading activities carried on by a company which come under 6 headings related to the use of a qualifying ship. These are —

- the basic activity of a shipping company – the carriage of passengers or cargo for reward (that is, on a commercial basis) by sea;
- the provision by the company using the qualifying ship for the purposes just described of on-board services such as the operation of cinemas, bars or restaurants ancillary to the carriage of passengers and cargo;
- the contracting-out to specialist operators, by the company operating the qualifying ship, of the on-board services just described;
- the subjecting of fish to a manufacturing process on board a qualifying ship. If a process is considered to be a manufacturing process when carried on onshore it is also to be treated as a manufacturing process when it is carried on in a factory ship. Processes treated as manufacture would typically involve 2 or more of the following processes – filleting, mincing, cooking, smoking, quick freezing and packaging (each claim should be examined by reference to the details of the process involved);
- the "wet leasing" of a qualifying ship for use for the purpose of the carriage of passengers or cargo for reward or the subjecting of fish to a manufacturing process aboard a qualifying ship. Under a "wet lease" or "non-demise" charter the lessor provides the ship, crew, fuel, provisions, etc and is responsible for the direction and control of the ship and the crew throughout the period of the charter. This is in contrast to a "dry lease" or "bare-boat" charter under which the lessor provides the ship only and the lessee is responsible for the provision of the crew and the direction and control of the vessel and crew.
- the transporting of supplies or personnel to, or providing services in respect of, a mobile or fixed rig, platform, vessel or installation of any kind at sea.

"qualifying shipping trade" is, in effect, a trade, carried on by a company in "the relevant period", which consists exclusively of qualifying shipping activities. Where, however, a company carries on a mixed trade, the qualifying shipping activities are treated as a separate trade ***under subsection (3)***.

"relevant certificate" is a certificate issued by the Minister for the Marine and Natural Resources with the consent of the Minister for Finance. It relates to the lease of a ship and certifies on the basis of a business plan and information supplied by the lessee that the ship being leased will result in an upgrading and enhancement of the lessee's fleet. It must also state that the ship has the potential to create additional employment or to assist in maintaining employment and that it meets current environmental and safety standards. Before issuing a certificate the Minister for the Marine and Natural Resources must be satisfied that the lease of the ship is for bona fide commercial purposes and not for the purposes of tax avoidance.

"the relevant period" is the period from 1 January, 1987 to 31 December, 2010.

"specified capital allowances" are, effectively, wear and tear allowances under ***section 284*** in respect of a qualifying ship in use for a qualifying shipping trade. Capital allowances in respect of a qualifying ship are "specified capital allowances", liable to the restrictions imposed under ***subsection (4),*** even if they cannot be used in computing the income of a qualifying trade.

***Separate trades***

Where a company carries on in the course of its trade qualifying shipping activities and other activities, the qualifying shipping activities are to be treated as a separate trade for all taxation purposes and receipts and expenses are to be apportioned as necessary in order ***(3)(a)*** to ascertain the income of the separate trade. The creation of the separate trade, which is an artificial device necessary to isolate the income and expenses of the trade, is not, however, to bring into play the provisions for the computation of profits where a trade commences or ceases.

Provision is made, however, to protect the existing right of such a company under ***section 396(1)*** — ***(3)(b)***

- to carry forward losses incurred effectively in its overall trade, before the creation of the separate trade, against income arising in the separate trade, and
- when the span of relevant period ends on 31 December, 2010, and effectively the separate shipping trade ceases to exist, to carry forward losses incurred before that date against the income of its normal trading activities.

***Ring-fence***

In general, the set-off of losses incurred in a qualifying shipping trade or specified capital allowances relating to a qualifying ship is restricted to relief against income from a qualifying shipping trade. ***(4)***

Specifically, the specified capital allowances can be set off only against income of a qualifying shipping trade, either of the company incurring the expenditure relating to the specified capital allowances or of a fellow group member by way of group relief. In the case of specified capital allowances relating to a ship which is provided for use in a qualifying shipping trade by a lessor under a "bare-boat" charter or "dry lease" (that is, where the ship only is leased and the lessee provides the crew and is responsible for the direction and control of the ship and the crew), the lessor is entitled to set the specified capital allowances against leasing income which, because the ship is not chartered on a "wet lease" basis (that is, the letting is not a qualifying shipping activity), would be chargeable on the leasing company at the standard or reduced rate of corporation tax. ***(4)(a)***

In the case of trading losses arising in a shipping trade the operation of ***section 396(2)*** is restricted by confining the relief under that section to the amount of shipping income included in those profits. A similar restriction is applied to group relief under ***section 420(1)***. Losses of a member of a group from a shipping trade liable can be availed of by way of group relief only to the extent that a fellow member of the group has shipping income against which to offset those losses. ***(4)(b)***

Where the set-off of specified capital allowances relating to a "dry-leased" qualifying ship against the resultant leasing income is permitted, the provisions of ***section 403(1)I*** are overruled so that the chartering of the ship is to be regarded as a trade of leasing for the purposes of that section and, accordingly, ***section 403*** (which relates to the "ring-fencing" of capital allowances in respect of leased assets) applies to the specified capital allowances relating to a leased ship. In addition, a further ring-fence is imposed on the use of specified capital allowances by invoking ***section 403(2)*** so as to deem the trade of leasing of a qualifying ship for use in a shipping trade to be a separate trade of leasing. ***(4)I***

***Relaxation of ring-fence where relevant certificate produced***

In the case of a ship on "dry-lease" engaged in qualifying shipping activities, the provisions which confine the offset of losses and capital allowances in respect of the leased ship to the leasing income from the ship are not to apply where the terms of the lease comply with ***clauses (I)*** and ***(II)*** of ***section 404(1)(b)(i)*** and where the lessee produces a relevant certificate to Revenue. This applies where a contract to acquire or construct a ship is concluded on or after 1 July, 1996. ***(5)***

***Tax based leasing***

A qualifying shipping trade is not entitled to avail of tax-based leasing. Although this facility is normally available to companies entitled to the 10 per cent rate of corporation tax, it is denied to shipping companies on the grounds of Exchequer cost. ***(6)***

## 408 Restriction on tax incentives on property investment

### Summary

| | |
|---|---|
| This section restricts the manner in which capital allowances on buildings may be set off in the case of participants in a scheme or arrangement for the sharing of a building by the public or by a section of the public. Small groups of individuals or companies have in the past come together for the purposes of making a joint investment in a building or structure and have been entitled to set off the capital allowances available against their income from all sources. The position of that type of investment is not changed. The restrictions apply where a scheme or arrangement provides facilities for the public or a section of the public to share in a building or structure. Recent developments in property investment have involved very efficient use of the capital allowances on certain buildings by dividing the allowances among large groups of taxpayers in what is in essence a tax efficient investment scheme rather than the purchase of a building by a small number of taxpayers as was envisaged when industrial building allowances were introduced. Under the schemes, the initial allowances are used to reduce taxable income from all sources. This section provides that an investor in such a scheme is not entitled to have the allowances on the building set off against total income under ***section 305(1)(b)*** or ***section 308(4)***. Investors are not denied the benefit of the capital allowances. However, the allowances are only available to reduce rental income. | |
| The question of whether any joint investment in property constitutes a "property investment scheme" should be referred to the Revenue Commissioners. | |
| Details | |
| ***Definitions*** | |
| "property investment scheme" is a scheme or arrangement with the following characteristics — | ***(1)*** |
| • it provides facilities for investment by the public or a section of the public in a building or structure, | |
| • the facilities are promoted, whether by way of public advertisement or otherwise. | |
| The ownership in the building can be held by participants either directly or through a trustee, nominee or similar person. | |
| A "property investment scheme" does not include schemes for investment in property if they are of a type which commonly prevailed in the State in the 5 year period from January 1986 to January 1991. The section excludes a scheme or arrangement as respects which the Revenue Commissioners are of the opinion that the manner of sharing in the property and the number of persons sharing accords with a practice in that period. This would cover the direct investment by a small number of participants. A person aggrieved by the opinion of the Revenue Commissioners has a right of appeal to the Appeal Commissioners and to the High Court in the normal way. | |
| "specified interest" is an interest in or deriving from a building or structure held pursuant to a property investment scheme. | |

| | |
|---|---|
| ***Restriction on the set-off of allowances*** | |
| An investor in a property investment scheme is denied the benefits of — | ***(2)*** |
| • in the case of an individual, the set-off of allowances against total income of the taxpayer under ***section 305(1)(b)***, and | |
| • in the case of a company, the set-off allowances against profits of whatever description under ***section 308(4)***, | |
| in relation to expenditure incurred on a building or structure under the scheme. | |
| ***Appeals*** | |
| A person aggrieved by a decision made under this section may appeal the decision by notice in writing to the Appeal Commissioners. An appeal must be made within 30 days of the date of the notice of the decision. The Appeal Commissioners will hear and determine an appeal in the manner provided for in Part 40A. | ***(3)*** |

## 409 Capital allowances: room ownership schemes

### Summary

This section counteracts certain packaged schemes which involve groups of individuals investing in hotels. Typically such schemes, referred to as "room ownership schemes", invite individuals to joint a partnership for the purpose of investing in the construction of an aparthotel. Under an agreement in place at the time the investment is made, individual investors, having drawn down all the capital allowances available, are each to receive ownership of a nominated suite in the hotel.

Essentially, the section denies capital allowances in the case of a hotel investment involving a room ownership scheme. Thus, there is no entitlement to capital allowances where at the time of the investment any agreement or arrangement exists which provides that individual investors are to obtain a room or suite in the hotel at the end of the capital allowance write-off period. This restriction does not affect genuine hotels or aparthotels which are not the subject of such agreements or arrangements.

### Details

***Definitions***

Some of the more important are —

- "hotel investment" which does not extend to holiday camps or registered holiday cottages, ***(1)***
- "hotel partnership" which, essentially, is any group of number of persons through which an investment in a hotel is made. Where the investment is made by even one of the members of the group, it is treated as having been made by the hotel partnership. ***(1) & (3)(b)***

***Intent***

Being an anti-avoidance provision, the section contains a specific statement of purpose. ***(2)***

***Room ownership schemes***

A room ownership scheme exists where there is an arrangement in place at the time an investment is made in a hotel granting rights to any member (essentially, anyone who contributes capital to the hotel partnership or is in any other way a member of that partnership) of the group making the investment to acquire a room or suite in the hotel for consideration other than the market value. Such a scheme also exists where the ***(3)(a)*** arrangement bestows such rights on any person connected with a member of the group making the investment. It also covers the situation where the arrangement might provide that a member of the group who, for example, having earlier acquired title to a room or suite, diverts that room or suite from hotel use.

***Restriction on capital allowances***

With the exception of cases meeting the transitional requirements, capital allowances are denied in the case of capital expenditure incurred on any hotel where the investment deal involves a room ownership scheme. ***(4)***

***Transitional arrangements***

The section applies to capital expenditure on a hotel investment incurred on or after 26 March, 1997. ***(5)(a)***

The section does not apply, however, to projects which were already in the pipeline. These are defined as those in respect of which a binding, written contract was in place or an application for planning permission had been received by a planning authority before 26 March, 1997. ***(5)(b)***

## 409A Income tax: restriction on use of capital allowances on certain industrial buildings and other premises

### Summary

The purpose of the section is to restrict capital allowances available to individual passive investors on industrial and commercial buildings but excluding hotels, holiday camps, holiday cottages and other self-catering accommodation. ***Section 409B*** deals separately with hotels and holiday camps. Subject to transitional provisions, the restrictions generally apply to expenditure incurred after 3 December, 1997 on such buildings including those in tax designated areas. The restrictions do not, however, affect —

- investments made by an individual owner operator of a business or by an individual actively engaged in the operation and management of a business, or
- investments made by companies including financial institutions in any of the developments in question.

The measure is therefore essentially aimed at individuals who are lessors of industrial buildings and all types of commercial premises, including multi-storey car-parks, which attract capital allowances whether generally or under various tax incentive schemes such as the Urban Renewal, Living over the Shop, Rural Renewal, Park & Ride, Town Renewal and other schemes aimed at the development of certain medical, childcare and 3rd level educational facilities.

Passive investors targeted by the section may still set off up to €31,750 excess capital allowances against non-rental income in any tax year after the allowances have first been set against rental income from all sources. If, after such set-off, there are still excess allowances then the balance can be carried forward and set against rental income arising in the following year/s.

Transitional provisions provide that certain pipeline projects are not affected.

### Details

***Definitions***

"active partner" in a trading partnership is defined as a partner who works for the greater part of his or her time in the day-to-day management or conduct of the trade; ***(1)***

"industrial development agency" means the Industrial Development Agency (Ireland);

"partnership trade" and "several trade" are already defined in ***Part 43***;

"specified building" means industrial buildings within the meaning of ***section 268(1)***, (except for hotels, holiday camps and holiday cottages), certain other buildings used for childcare and 3rd level educational purposes as well as all types of commercial premises attracting capital allowances under various tax incentive schemes.

***Limit of €31,750***

The section dis-applies a provision in ***section 305(1)(b)*** which allows for the excess of capital allowances over, for example, rental income to be offset against a taxpayer's other income. A substituted provision places a limit of €31,750 (£18,500 for the short tax year 2001) on the amount of such excess allowances which can be set sideways. Any balance can be carried forward against future rental income. The measure is subject to transitional provisions and targets capital allowances in respect of expenditure incurred by passive investors on or after 3 December, 1997. Thus, for instance, in the case of an individual who is a lessor of an industrial or commercial building, the effect is to restrict to a maximum of €31,750 the amount of excess capital allowances which can be set against income other than rental income for tax purposes in any one year. ***(2)***

***Anti-avoidance***

The section anticipates that individuals affected by the €31,750 restriction limit might claim to be involved in a trading partnership. In this way they could use excess capital allowances to create or augment trading losses and thus circumvent the restricting measure. To guard against this, the section provides that unless an individual is an active partner, working for the greater part of his or her time in the day-to-day conduct of the trade, the amount of allowances which can be used to create or augment a trading loss is limited to €31,750 in a tax year. Also, where a partner who is not an active partner is involved in two or more partnership trades, he or she is deemed to be involved in a single partnership trade for the purposes of the section. This ensures that the €31,750 restriction limit applies to capital allowances in respect of expenditure incurred on specified buildings across all trades in which a partner is involved, instead of €31,750 for each partnership trade which would otherwise be the case. ***(3) & (4)***

***Transitional measures***

This section includes some transitional arrangements where commitments were made prior to 3 December 1997. ***Section 409A*** does not apply to capital expenditure incurred by an individual on or after 3 December 1997 on a specified building where before that date: ***(5)***

- in the case of construction, the foundation of the building was laid in its entirety,
- in the case of refurbishment, work up to the value of 5 per cent of the total cost of the refurbishment was carried out, or
- the building was provided for the purposes of a project approved for grant assistance by an industrial development agency within a period of two years preceding 3 December 1997.

Additionally, the section does not apply to expenditure incurred by an individual on or after 3 December 1997 where an application for planning permission for the work represented by the expenditure had been received by a planning authority prior to 3 December 1997, or the individual can prove, to the satisfaction of the Revenue Commissioners, that a detailed plan had been prepared for such work and detailed discussions had taken place with a planning authority prior to 3 December 1997. In these instances the expenditure must be incurred by the person entitled to the capital allowances under an obligation entered into before 3 December 1997 or before 1 May 1998 pursuant to negotiations which were in progress before 3 December 1997

Obligations will be treated as having been entered into before 3 December 1997 only if there was an existing and binding contract, in writing, under which the obligation arose. Negotiations pursuant to which the obligation was entered into shall not be regarded as having been in progress unless preliminary commitments or agreements, in writing, were entered into before that date. ***(6)***

***Death of investor***

There is provision to allow transitional treatment for expenditure incurred by a new investor to a project where an original investor, who had already contracted to invest in an industrial or commercial building, dies. The new investor must give a written commitment to honour the obligations of the deceased investor in relation to the project and must actually incur the expenditure which the deceased individual would have incurred. ***(7)***

***Application to professions***

The provisions of the section which are set in the context of a trade are specifically extended to cover professions as well. ***(8)***

## 409B Income tax: restriction on use of capital allowances on certain hotels, etc

### Summary

The purpose of the section is to restrict capital allowances available to individual passive investors in certain hotels and in holiday camps. Subject to transitional provisions, the restrictions generally apply to expenditure incurred after 3 December, 1997 on such buildings including those in tax designated areas. The restrictions do not, however, affect —

- investments made by an individual owner operator of a business or by an individual actively engaged in the operation and management of a business, or
- investments made by individuals including a passive investor in 3 star or better hotels in the counties of Cavan, Donegal, Leitrim, Mayo, Monaghan, Roscommon and Sligo, other than in seaside resorts in those counties, or
- investments made by companies including financial institutions in any of the developments in question.

The measures are therefore essentially aimed at individuals who are lessors of hotels (other than in the 7 counties mentioned) and holiday camps which attract capital allowances whether generally or under various tax incentive schemes.

Passive investors targeted by the section may only set capital allowances against rental income from all sources. Where allowances exceed rental income in any year the balance can be carried forward and set against future rental income.

### Details

***Definitions***

"active partner" has the same meaning as in ***section 409A***; ***(1)***

"specified building" covers hotels and holiday camps except hotels located in certain named counties, other than in seaside resort areas in those counties. It also excludes certain holiday cottages and other self-catering accommodation, allowances in respect of which are already ringfenced;

"partnership trade" and "several trade" are already defined in ***Part 43***.

### *Ringfence*

The section disapplies a provision which allows for the excess of capital allowances over rental income, for example, to be offset against a taxpayer's other income. The section applies, subject to the transitional provisions, in respect of expenditure incurred by passive investors on certain hotels and on holiday camps on or after 3 December, 1997. Thus, for example, an individual who is a lessor of a hotel outside one of the 7 counties specified can only set capital allowances in respect of expenditure incurred on the hotel against rental income. ***(2)***

### *Anti-avoidance*

The section anticipates that individuals affected by the restriction in the set-off of allowances might claim to be involved in a trading partnership. In this way they could use excess capital allowances to create or augment trading losses and thus circumvent the restricting measure. To guard against this, the section provides that unless an individual is an active partner, working for the greater part of his or her time in the day-to-day conduct of the trade, the allowances cannot be used to create or augment a trading loss. ***(3)***

### *Transitional measures*

The ringfencing of allowances under the section does not apply where foundations were laid, or, in the case of a refurbishment project, where 5 per cent of the cost of the project was incurred, before 3 December, 1997. The restrictions do not also apply where — ***(4) & (5)***

- an application for planning permission was received by a planning authority before 3 December, 1997 or where a person can show that plans had been prepared and detailed discussions had taken place with a planning authority before that date and that the planning authority can give an affidavit or statutory declaration to that effect, and
- the expenditure on the project is incurred under a contract concluded before 3 December, 1997 by the person entitled to the capital allowances or, alternatively, under a contract concluded before 1 May, 1998 where that person can show that he or she had made preliminary commitments or agreements in writing in relation to the project before 3 December, 1997.

### *Death of investor*

There is provision to allow transitional treatment for expenditure incurred by a new investor to a project where an original investor, who had already contracted to invest in the project, dies. The new investor must give a written commitment to honour the obligations of the deceased investor in relation to the project. ***(6)***

### *Application to professions*

The provisions of the section which are set in the context of a trade are specifically extended to cover professions as well. ***(7)***

## 409C Income tax: restriction on use of losses on approved buildings

### Summary

This section restricts the use by passive investors of relief under ***section 482***.

Relief under ***section 482*** is available in respect of expenditure on the repair, maintenance or restoration of certain buildings by the owner or occupier of such buildings. The buildings concerned are those which have been determined by the Minister for the Environment and Local Government (previously the Minister for Arts, Heritage, Gaeltacht and the Islands) to be of significant scientific, historical, architectural or aesthetic interest and determined by the Revenue Commissioners to have reasonable public access. Relief is given by treating the amount of such expenditure as an amount of loss in a trade which, under the Tax Acts, can be used to reduce a person's income liable to income tax. Up until 2009 an individual participating in a passive investment scheme could claim relief limited to €31,750 under ***section 482*** as owner of such a building. Broadly, a passive investment scheme is defined as a scheme under which:

- a person (who will make a claim under ***section 482*** as owner) takes an interest in a building from its then owner;
- at that time, or in the next 5 years, the building is determined to be an approved building for the purposes of ***section 482***; and
- the arrangements are such that the original owner has influence over how expenditure on the building is to be incurred; or, the original owner is entitled to participate in the tax benefits; or the original owner may reacquire the interest.

From the tax year 2010, no relief is available to passive investors, except for the years 2010 and 2011 in respect of work which was underway on or before 4 February 2010 and in respect of work which begins after that date, where such work is carried out under a written contract which was entered into before that date.

## Details

"approved building", "the Minister" and "qualifying expenditure" have the meaning assigned to those terms in ***section 482(1)(a)*** as set out below. ***(1)***

An "approved building" is a building that has been determined by the Minister to be of significant scientific, historical, architectural or aesthetic interest and is determined by the Revenue Commissioners to have reasonable public access.

"the Minister" means the Minister for the Environment and Local Government (previously the Minister for Arts, Heritage, Gaeltacht and the Islands).

The term "qualifying expenditure" means expenditure on an approved building and covers expenditure on the repair, maintenance or restoration of the building and includes expenditure on the maintenance or restoration of any land occupied or enjoyed with the building as part of its gardens or grounds of an ornamental nature. In addition, qualifying expenditure includes expenditure of up to €6,350 per chargeable period in respect of—

- the repair, maintenance or restoration of an approved object in the approved building,
- the installation, maintenance or replacement of a security alarm system in the approved building, and
- public liability insurance for the approved building.

The expenditure must be incurred by the person who owns or occupies the approved building.

"the claimant" has the meaning assigned to it by ***section 482(2)(a)*** (i.e. the claimant is the person who makes a claim for relief under ***section 482(2)***).

"eligible charity" has the meaning given to that term in ***paragraph 1*** of ***Part 3*** of ***Schedule 26A***. It means any body in the State that is the holder of an authorisation under that Part that is in force. Under ***paragraph 2*** of ***Part 3*** of ***Schedule 26A***, the Revenue Commissioners may issue an authorisation to a body stating that it is an eligible charity if that body makes an application to them and furnishes such information as they may reasonably require.

"ownership interest", in relation to a building, means an estate or interest in a building which would entitle the person, who holds it, to make a claim under ***section 482***, as owner of the building.

"relevant determinations", in relation to a building, means the determinations made by the Minister and the Revenue Commissioners, respectively, in accordance with ***section 482(5)(a)***. The determinations are those that are issued by the Minister for the Environment and Local Government (previously the Minister for Arts, Heritage, Gaeltacht and the Islands) to the effect that a building is of significant scientific, historical, architectural or aesthetic interest and by the Revenue Commissioners to the effect that reasonable access is afforded to members of the public.

The term "passive investment scheme" is defined as a scheme under which — ***(2)***

- a person (a "transferee") who will make a claim under ***section 482***, as owner of a building, takes an interest in a building from its then owner (the "transferor");
- at that time, or in the next 5 years, the building is determined to be an approved building for the purposes of ***section 482***; and
- arrangements are such that the original owner has influence over how expenditure on the building is to be incurred, or the original owner is entitled to participate in the tax benefits arising as a result of entering into the scheme or the original owner may re-acquire his or her interest in the building.

The section applies where — ***(3)***

- by virtue of ***section 482(2)*** qualifying expenditure in relation to an approved building is treated as a loss sustained in a trade carried on by a claimant, as owner of the building, in a chargeable period,
- the claimant is an individual who is a transferee in relation to a passive investment scheme (the section does not apply to companies), and
- relief is claimed under ***section 381*** in respect of that loss.

Where the section applies, the amount of the loss which can be treated as reducing income for a year of assessment under ***section 381(1)*** shall be — ***(4)***

- the full amount of the loss, or
- €31,750,

whichever is the lesser amount.

This subsection reduces to nil the amount of loss relief which a passive investor can claim as a deduction under ***section 381(1)*** thereby eliminating loss relief entirely from the tax year 2010 for such individuals. ***(4A)(a)***

However, transitional arrangements ensure that relief will continue to be given for the tax years 2010 and 2011 in the following circumstances: ***(b)***

(i) where work was completed prior to 4 February 2010:

- relief will be available in respect of qualifying expenditure in 2010 (i.e. between 1 January 2010 and 3 February 2010). In addition, the carry forward provisions in ***section 482(3)*** will apply, as appropriate, for 2010 and 2011 in respect of qualifying work in 2008, 2009 and 2010.

(ii) where work is underway on 4 February 2010:

- relief will be available in respect of qualifying expenditure in 2010 and 2011. In addition, the carry forward provisions in ***section 482(3)*** will apply, as appropriate, for 2010 and 2011 in respect of qualifying work in 2008, 2009 and 2010.

(iii) where work begins after 4 February 2010, but only where that work is carried out under written contract entered into before 4 February 2010:

- relief will be available in respect of qualifying expenditure in 2010 and 2011. In addition, the carry forward provisions in ***section 482(3)*** will apply, as appropriate, for 2011 in respect of qualifying work in 2010.

Where, as a result of this restriction, relief cannot be given for a year of assessment for part of the loss, then, for the purposes of ***section 482(3),*** that part of the loss will be treated as not being given owing to an insufficiency of income and thereby it may be carried forward to the next chargeable period and, if still not fully utilised in that period, it may be carried forward to the next subsequent chargeable period, but no further. The amount carried forward in each such case is treated as a loss in a separate trade carried on by the claimant in the chargeable period into which the loss is carried forward. The net effect of the creation of separate trades, in each of the chargeable periods into which the unrelieved expenditure is carried forward, is to ensure that the unrelieved loss may only be set against other income of the person arising in each of those chargeable periods. Any residue cannot be brought forward to offset against any other income arising in chargeable periods subsequent to those 2 chargeable periods. ***(5)***

Any unutilised loss carried forward to a chargeable period must be utilised in priority to any relief due in that chargeable period. Relief carried forward from an earlier period must also be utilised in priority to relief carried forward from a later period.

Transitional provisions ensure that the section will not apply — ***(6)***

- to qualifying expenditure in relation to an approved building, incurred before 5 December 2001 (i.e. Budget Day),
- to qualifying expenditure, in relation to an approved building, incurred on or after 5 December 2001 and before 31 December 2003, where the relevant determinations have been made in relation to that building before 5 December 2001,
- to qualifying expenditure, incurred before 31 December 2003, in relation to a building, in respect of which —
  - the Revenue Commissioners have, before 5 December 2001, indicated in writing, that proposals made to them are broadly acceptable, so as to enable them to make a determination under ***section 482(5)(a),*** and
  - an officer of the Department of Environment and Local Government (previously the Department of Arts, Heritage, Gaeltacht and the Islands) has indicated, before 5 December 2001, that, having inspected the building, the officer is satisfied that, if required, the officer would recommend to the Minister that a determination under ***section 482(5)(a)*** be made by the Minister, or
- to qualifying expenditure, incurred before 31 December 2003, in relation to a building where —
  - the Minister has made a determination under ***section 482(5)(a)*** before 5 December, 2001, in relation to the building, and
  - the claimant has undertaken to gift, whether directly or indirectly, to the transferor (i.e. the person from whom the claimant obtained ownership of the building) who is an eligible charity, the full value of the relief to which the individual is entitled under ***section 381***, by virtue of making a claim under ***section 482(2)*** and the individual actually does so.

## 409D Restriction of reliefs where individual is not actively participating in certain trades

### Summary

***Section 409D*** is an anti-avoidance measure aimed at closing off the unintended use of capital allowances by passive investors in certain trades. The trades concerned are in the area of electricity generation, film and music production and oil and gas exploration and exploitation.

Individuals who are "passive investors" in such trades (that is, where they invest in such a business without actively participating in the running of the trade) will have their entitlement to tax reliefs restricted. Under this section, such individuals are not entitled to set-off losses and capital allowances of such trades against their other income so as to reduce their income tax liability. The section restricts the way the tax reliefs available work so that the reliefs can only be used to shelter the individual's income from tax to the extent, if any, that it is earned from the targeted trades. The measure has no effect whatever on individuals or companies who are genuinely engaged in a full-time capacity in any of the trades targeted.

## Details

### *Definitions*

An "active trader" is an individual who spends the greater part of his or her time working in, or in the management of, a trade. ***(1)***

The definition of "electronic" is taken from the Electronic Commerce Act 2000. It is used in relation to the production of films and music and is designed to encompass all media which might be used for the production of films and music properties. The definition seeks as far as possible to be technological neutral so as to be applicable to any new technology which might emerge.

A "specified trade" is a trade involving or consisting of the generation or supply of electricity, operations in the area of oil and gas exploration and exploitation, and various activities in the area of film and music production and exploitation.

The "specified provisions" are ***sections 305*** and ***381***.

***Section 305*** allows capital allowances for machinery or plant which are not set off against income from the trade in which the machinery or plant is used to be set-off against other income of the individual (for example, professional income, employment income, income from other trades or rental income).

***Section 381*** provides for loss relief. The aspect of loss relief which this section is concerned with is the provision which allows the amount of the loss to be deducted from the other income (that is, income other than income from the trade in which the loss arises) of an individual for the year in which the loss is incurred.

A "relevant year of assessment" is the tax year 2002 and later years in which an individual carries on a trade of electricity generation other than as an active trader.

In the case of any other specified trade, a "relevant year of assessment" is the year of assessment 2003 and subsequent years.

### *Restrictions*

The restrictions apply where an individual carries on a trade of electricity generation or supply other than as an active trader. In other words, the section has no affect whatever in the case of an individual who carries on these trades in a full-time capacity. The section only applies to individuals who effectively are investors in the business and who engage others to carry on the actual trade. ***(2)***

Where the provision applies any relief due to be given in the tax year 2002 or a later year in respect of a loss in the trade or in respect of a capital allowance will be given only against income from that trade. In other words, the reliefs available are ring fenced and can be used only to reduce the income, if any, from the actual trade.

As a safeguard the final part of the provision ensures that the amount qualifying for relief and restricted as set out above cannot be used to obtain tax relief against any other income.

## 409E Income tax: ring-fence on use of certain capital allowances on certain industrial buildings and other premises

### Summary

Capital allowances have been and continue to be available in respect of a wide spectrum of buildings, ranging from buildings classed as industrial buildings such as factories and hotels to commercial premises in areas designated under various tax incentive schemes. Companies have claimed capital allowances on these buildings based on the original cost of constructing the buildings, and these allowances would have been offset for corporation tax purposes when corporation tax was charged at rates up to 43%. Where a company now sells such a building before the end of the clawback period for the capital allowances, it will suffer a clawback of the capital allowances at the time of sale. The company will be liable to corporation tax on the amount clawed back at either 12% or, in some cases, 25%.

In contrast, if the building were then purchased by individual investors, those individuals could claim the capital allowances related to the building at their marginal income tax rate of 41 per cent, in equal annual amounts over the remaining period of the "tax life" of the building. The tax life for most buildings is 25 years. In many cases, the individual investor could offset these capital allowances at the marginal tax rate against all of his or her income, that is, trading, professional, employment, investment and rental income, thereby avoiding the annual capital allowances cap of €31,750 on the set-off of capital allowances against non-rental income imposed by ***section 409A***.

In order to protect the Exchequer from such tax arbitrage arrangements, this section provides that, with effect from the tax year 2003, where a building in respect of which a company has claimed capital allowances is sold or transferred to individual investors, those investors will be entitled to set the capital allowances related to the building only against their rental income from the building concerned. If the capital allowance entitlement for any tax year exceeds the rental income for that year, the excess is carried forward for set-off against the rental income from the building for the next tax year, and so on for subsequent tax years.

### Details

***Definitions***

The terms "company", "rent", "relevant interest" and "residue of expenditure" are defined by reference to the meaning of similar terms in other provisions of the TCA. ***(1)***

A "company" means any body corporate including a trustee savings bank, but does not include a European Economic Interest Grouping, a health board, a vocational educational committee, a committee of agriculture or a local authority.

The term "rent" includes any rentcharge and any payment in the nature of rent, notwithstanding that the payment may relate partly to premises and partly to goods and services. It also includes any payment made by a lessee to defray the cost of work of maintenance or repairs to premises, not being work required by the lease to be carried out by the lessee. In addition, a certain proportion of any premium paid in connection with a short lease (that is, a lease which does not exceed 50 years) is treated as rent. The amount so treated is the premium reduced by 2% for each complete period of 12 months, other than the first such period, comprised in the lease. Thus, in the case of a premium of €100,000 for a 41 year lease, the part of the premium treated as rent is €20,000 [€100,000 – (€100,000 x 2% x (41 – 1)]. ***Section 98*** treats a number of items as the payment of a premium, e.g. a lump sum paid in place or rent, a sum paid nominally for the surrender of a lease, a sum paid for the variation or waiver of any terms of a lease.

The term "relevant interest" is defined, in relation to expenditure incurred on the construction or refurbishment of a building or structure. It means the interest (leasehold or freehold) in the building or structure to which the person who incurred the expenditure was entitled when that person incurred the expenditure.

The "residue of expenditure" is essentially the capital expenditure incurred on the construction or refurbishment reduced by the amount of any initial allowance, writing-down allowances or balancing allowance made in respect of that expenditure. Where a balancing charge is made in respect of the expenditure, the residue is increased by the amount on which the charge is made.

A number of terms are also specifically defined in the subsection.

The expression "specified amount of rent" is defined in relation to a specified building and an individual for a year of assessment. In essence, the expression means the profit rent of the individual from the building for the year of assessment, as computed in accordance with the provisions of ***section 97(1)***.

A "specified building" is —

(a) a building or structure (or part thereof) which is or is to be an industrial building or structure by reason of its use or deemed use for a purpose specified in ***section 268(1)***, where any initial allowance, writing-down allowance or balancing allowance under ***Chapter 1*** of ***Part 9*** has been or is to be made to any company in respect of capital expenditure incurred or deemed to be incurred on its construction or refurbishment, or

(b) any other building or structure (or part thereof) where such a capital allowance has been or is to be made to any company by virtue of ***Part 10*** or ***section 843*** or ***843A***. ***Part 10*** includes provisions relating to capital allowances for buildings in areas designated under various tax incentive schemes (e.g. urban, rural or town renewal schemes), while ***sections 843*** and ***843A*** deal with capital allowances for buildings used for third-level educational and childcare purposes, respectively.

***Application***

The following criteria must be met if the section is to apply: ***(2)***

- A company must, at any time on or after 1 January 2003, hold the relevant interest in relation to capital expenditure incurred or deemed to be incurred on the construction or refurbishment of a specified building. ***(a)***
- Subsequent to that time an individual becomes entitled (whether on a sale or otherwise) to that relevant interest or part of that interest. It is immaterial whether or not subsequent to that time some other person or persons had previously become entitled to that relevant interest or that part of the interest. ***(b)***

- The individual is entitled to capital allowances under ***Chapter 1*** of ***Part 9*** in respect of the capital expenditure concerned or the residue of that expenditure which allowances would be set off against his or her Irish rental income. In other words, the individual must be a lessor of the specified building. ***(c)***

***Ring-fence on allowances***

Where the section applies, then, notwithstanding any other provision of the Income Tax Acts, the following consequences arise: ***(3)***

- Any capital allowance which is to be made to the individual for the tax year 2003 or any subsequent year under ***Chapter 1*** of ***Part 9***, in respect of the capital expenditure incurred on the construction or refurbishment of the specified building, or in respect of the residue of that expenditure, may not exceed the profit rent of the individual from the specified building for that year. Any such allowance is to be made in charging that profit rent and is to be available only against that profit rent. ***(a)***
- ***Section 278***, which sets out general rules relating to how capital allowances are to be given, is to apply with any modifications necessary to give effect to this ring-fencing of the allowances. ***(b)***
- ***Section 305(1)(c)*** will apply in relation to the making of any of the capital allowances concerned. ***Section 305*** governs the use of certain capital allowances, i.e. it details the income against which the allowances can be set off and provides rules for dealing with any excess allowances. In effect, ***section 305(1)(c)*** provides that if the amount of the capital allowance for any year of assessment which would have been made to the individual if this section had not been enacted is greater than the profit rent of the individual from the specified building for that year, the excess is to be added to the amount of the allowance to be made to the individual for the next year of assessment in respect of the capital expenditure incurred on the construction or refurbishment of the specified building or the residue of that expenditure, and is deemed to be part of the allowance for that next year, and so on for subsequent tax years. This section will then apply in relation to the resulting allowance for that next year or any subsequent year of assessment. ***(c)***

## CHAPTER 4A
*Termination of carry forward of certain losses*

## Overview

This Chapter was introduced by section 17 of the Finance Act 2012 and provides for a termination of the carry-forward of certain unused capital allowances after the tax life of the respective building has ended. These measures only come into effect in 2015 or later. The details are as follows:

- The arrangements apply only to the various accelerated property and area-based capital allowance schemes. The ordinary industrial buildings allowance or the wear and tear allowance for plant and machinery are unaffected.
- They apply solely to passive investors. Persons who are actively engaged in their respective trades are not affected.
- With effect from 1 January 2015, any unused accelerated capital allowances which are carried forward beyond the tax life of the building or structure to which they relate, are immediately lost. This essentially means that if the tax life has ended at any time up to the end of 2014, then the unused allowances are lost in 2015. On the other hand if the tax life is due to end later than 2014, then the allowances are lost going into the following year.

## 409F Interpretation and general (Chapter 4A)

This Chapter applies notwithstanding any other provision of the Acts. ***(1)***

The following definitions are used in this Chapter. ***(2)***

"active partner" has the same meaning as in ***section 409A***. This means in a trading partnership, the partner who works for the greater part of his/her time in the day-to-day management or conduct of the trade;

"active trader" has the same meaning as in ***section 409D***. This is the individual who spends the greater part of his/her time working in, or in the management of the trade;

"area-based capital allowance" is a reference to all of the accelerated capital allowances provided for under any of the designated area or urban or rural renewal schemes. It also includes all of the older schemes, which have formally ended or have been replaced in more recent times. Finally, these allowances also include allowances given in an earlier period and carried forward into a later one;

"balancing allowance" or "balancing charge" mean any allowance or charge made under ***section 274***. This is a reference to the allowance or charge which may apply upon the sale of a capital asset;

"capital allowance" means any of the allowances referred to in the definition of area-based capital allowance or specified capital allowance;

"chargeable period" has the same meaning as in ***section 321***. This essentially means a year of assessment or its basis period for an individual and a period of account for a company;

"relevant accounting period" in relation to a company, means the later of the accounting period immediately after the one in which the tax life of the building has ended or the accounting period ending in 2015. This latter period is qualified in the case of a company, which has more than one accounting period ending in 2015. In such cases it is the first of these accounting periods;

"relevant chargeable period" applies to both individuals and companies and means the later of the chargeable period immediately after the one in which the tax life of the building has ended or the chargeable period ending in 2015. This latter period is qualified in the case of a company, which has more than one chargeable period ending in 2015. In such cases it is the first of these chargeable periods;

"relevant tax year" in relation to an individual means the later of the tax year immediately after the one in which the tax life of the building has ended or 2015;

"specified capital allowance" means any specified relief, being a writing down allowance, a balancing allowance or any of the other property-based accelerated capital allowances provided for and includes any unused amount of such allowances carried forward from one chargeable period into a subsequent one in accordance with ***Part 9***;

"specified relief" has the same meaning as in ***section 485C***. This is a reference to the reliefs which are restricted under the high earners restriction;

"tax life" in relation to a building, means the appropriate period mentioned in ***section 272(4)*** after which no capital allowances may be given to a subsequent purchaser. This period can vary for different types of buildings and under different schemes;

"tax year" means a year of assessment;

"writing down allowance" means any allowance provided for under ***section 272*** and includes an allowance as increased under ***section 273***. This is the annual allowance, which may be written off against income in respect of a range of industrial buildings or structures and also includes circumstances in which "free depreciation" is or was allowed.

## 409G Termination of capital allowances

Provision is made in relation to individuals, that any unused specified capital allowances which are carried forward into a relevant tax year in a trading or rental context (***sections 304*** and ***305***) are lost. In the context of a trade, this restriction does not apply to the active trader or active partner (***subsection (5)***). This provision is subject to ***subsection (6)***. ***(1)***

Provision is made in relation to companies, that any unused specified capital allowances which are carried forward into a relevant accounting period or back into a previous accounting period (***section 308 (3)*** and ***(4)***) in a rental context, are lost. This restriction does not apply to a trading company and is subject to ***subsection (6)***. ***(2)***

Provision is made in relation to individuals, that any unused area-based capital allowances which are carried forward into a relevant tax year in a trading or rental context (***sections 304*** and ***305***) are lost. In the context of a trade, this restriction does not apply to the active trader or active partner (***subsection (5)***). This provision is subject to ***subsection (6)***. ***(3)***

Provision is made in relation to companies that any unused area-based capital allowances which are carried forward into a relevant accounting period or back into a previous accounting period (***section 308 (3)*** and ***(4)***) in a rental context, are lost. This restriction does not apply to a trading company and is subject to ***subsection (6)***. ***(4)***

In relation to individuals, none of the specified capital allowances or area-based capital allowances are lost in the case of an active trader or active partner. ***(5)***

In a small number of circumstances in which a balancing charge may apply (on disposal of a building, for example) to a person, even though the tax life of the building or structure has already ended, the balancing charge may be reduced by an amount equal to the unused capital allowance which would have been available to set against it, but for the operation of this section. Without this provision, the operation of the balancing charge would be excessive. ***(6)***

# CHAPTER 5
*Group Relief*

## Overview

This Chapter, in recognition of the fact that groups of companies generally comprise a single economic entity, provides in ***section 411*** for a system of relief for trading losses and related matters (for example, excess Case V capital allowances, excess management expenses or excess charges on income) under which the loss, etc of one member of a group (the surrendering company) may be set off against the profits of another member of the group (the claimant company). The relief is also available to a consortium (***section 411***). Group relief is available in the first instance where the loss arises in a trade within the charge to Irish corporation tax and all companies taken into account to determine whether those companies are members of a group are resident in an EU Member State, an EEA Member State with which Ireland has a tax treaty or in the United Kingdom. In addition, an Irish-resident company may offset against its taxable income the losses of a subsidiary in an EU/EEA Member State, where certain conditions are met *(section 420C).*

The Chapter also provides that, where a company resident in an EU Member State, or in the EEA and with which Ireland has a double tax treaty, or in the United Kingdom, receives from another such company payments from which income tax is deductible and both companies are members of the same group, such payments are to be made without deduction of income tax (***section 410***).

The Chapter also contains provisions designed to prevent abuse of the reliefs afforded under it (***sections 423*** to ***428***).

A number of restrictions apply to the availability of group relief. For instance —

- a loss incurred by a company carrying on a trade of leasing may not be set off under ***section 420*** against the profits of a fellow group member to the extent that the loss is attributable to capital allowances (see ***sections 403(5)*** and ***404(2)(b)***),
- losses of a qualifying shipping trade may not be set off against the total profits of a claimant company under ***section 420(1)*** except to the extent that those profits are attributable to a qualifying shipping trade (see ***section 407***),
- losses and excess charges on income of manufacturing companies which are attributable to the sale of manufactured goods may only be set off against a claimant company's income from the sale of manufactured goods as reduced by any loss relief or charges on income (see ***section 456***),
- group relief is restricted where a company fails to make its return of income for an accounting period within the prescribed time limit (see ***section 1084***).

## 410 Group payments

### Summary

Where a company resident in a relevant Member State (defined in the section to cover an EU Member States or countries outside the EU which are in the European Economic Area and with which Ireland has a double tax treaty or the United Kingdom, receives from another such company payments from which income tax is deductible, the payments are to be made without deduction of income tax where certain relationships exist between the companies. The requirement to pay without deduction of tax applies where the company making the payment is —

- a 51 per cent subsidiary of the recipient company,
- a 51 per cent subsidiary of a company resident in a relevant Member State of which the recipient company is also a 51 per cent subsidiary, or
- a trading or holding company owned by a consortium which includes the recipient company.

Alternatively, the recipient company may be a 51 per cent subsidiary of the paying company. The section does not apply to payments received by a company on any investments if a profit on the sale of the investments would be treated as a trading receipt of that company. The effect of the section is simply to take the relevant payments outside the machinery for deducting and accounting for income tax on charges. The corporation tax treatment of the payments is not affected. Accordingly, the payments remain deductible as charges on income against the profits of the paying company, and are to be included in the chargeable profits of the recipient company.

### Details

***Definitions/interpretation*** ***(1)(a)***

"EEA Agreement" is the agreement signed at Oporto on 2 May 1992, which established the European Economic Area.

"EEA State" is a State which is a contracting party to the EEA Agreement, this consists of all EU Member States and Norway, Iceland and Liechtenstein.

"relevant Member State" is a Member State of the EU or a Member State of the EEA with which Ireland has a tax treaty (under ***section 826***). Ireland currently has a tax treaty with Iceland and Norway. This definition is deemed to include the United Kingdom.

“tax” in relation to a relevant Member State other than the State, is any tax which corresponds to Irish corporation tax.

“trading or holding company” is either a trading company or a company whose business consists primarily of the holding of shares in companies which are its 90 per cent subsidiaries.

“trading company” is a company whose business consists primarily of the carrying on of a trade or trades.

For a company to be regarded as owned by a consortium, not less than 75 per cent of its ordinary **(1)(b)** share capital must be beneficially owned by 5 or fewer companies resident in a relevant Member State none of which beneficially owns less than 5 per cent of that capital.

A company is to be regarded as resident in a relevant Member State if it is resident there for tax purposes under the law of that Member State.

The number of companies to which payment could be made without deduction of tax is not limited to 5 (for example, 10 companies could own the whole of the ordinary share capital of another company (being a trading or holding company), one owing 55 per cent of the shares and 5 per cent being held by each of the other 9. Any 4 of the latter, together with the company owning the 55 per cent, would comprise a consortium for the purposes of the section. In such a case, payments made by the trading or holding company to any of the 10 companies would be made without deduction of tax. If, however, any one of the 9 companies owned less than 5 per cent of the shares, that company could not be included as a member of a consortium.

Payments received by another person on behalf of a company are to be treated as if they were received by the company. **(2)**

***“51 per cent subsidiary”*** ***(3)***

The meaning of “51 per cent subsidiary” is given in ***section 9***. However, for the purposes of the definition as it applies for this section, it is necessary, in determining whether a company is a 51 per cent subsidiary of another company, to disregard any share capital held by that other company —

- either directly or indirectly in a company not resident in a relevant Member State, or
- indirectly, where the direct owner is a company for which a profit on the sale of the share capital concerned would be a trading receipt.

***Group Payments*** ***(4)***

Where a company resident in a relevant Member State receives from another such company payments from which income tax is deductible, then, if either of the following conditions are satisfied, the payments are to be made without deduction of tax and neither ***section 238*** or ***246*** (which provide for such deductions) apply to the payments. The conditions referred to are that the company making the payment must be —

- a 51 per cent subsidiary of the receiving company,
- a 51 per cent subsidiary of a company resident in a relevant Member State of which the receiving company is also a 51 per cent subsidiary, or
- a trading or holding company owned by a consortium which includes the recipient company.

Alternatively, the receiving company must be a 51 per cent subsidiary of the paying company.

***Application*** ***(5)***

The payments to which the section applies are those which are charges on income or would be so if they were not deductible in computing profits or if they were not excluded by ***section 243(7)*** (which limits the amount of certain interest which is to be treated as a charge on income**),** and, where the recipient is not resident in the State, the payments are taken into account in computing income subject to tax in such a "relevant Member State". However, payments received by a company in relation to any investments are excluded if a profit arising on the sale of those investments would be treated as a trading receipt of that company.

***Payments from which tax should have been deducted*** ***(6)***

Where a company, erroneously or by design, does not deduct income tax from a payment from which it should have made such a deduction, the inspector may make any necessary adjustments to correct the position.

Where an assessment has been made on the paying company to recover income tax which should have been deducted and the tax is unpaid after 3 months, recovery may be enforced ***(7)*** against the receiving company.

## 411 Surrender of relief between members of groups and consortia

### Summary

This section sets out the general nature of group relief and the conditions under which it is available for trading losses and other amounts such as excess management expenses and charges on income. The loss, etc is surrendered by the company sustaining it and allowed to any other company or companies with which it is associated either as a member of the same group or as a member in a consortium of companies. Two companies are members of the same group if one is a subsidiary of the other or both are subsidiaries of a third company, the parent/subsidiary relationship being determined according to the test of not less than 75 per cent ownership of the ordinary share capital.

Group relief within a consortium is available where the surrendering company is a trading company that is owned by a consortium and is not a 75 per cent subsidiary of any company and the claimant company is a member of the consortium. Similar relief is available where a holding company which owns 90 per cent of the ordinary share capital of the surrendering trading company is interposed between the latter company and the members of the consortium. A company is owned by a consortium if all of the ordinary share capital of the company is owned directly and beneficially by 5 or fewer companies. Two or more claimant companies are permitted to share in the surrendered group (but not consortium) relief in any proportion desired and, in the case of group (including consortium) relief, any deficiency or subvention payment in respect of a loss, etc made by a claimant company to the surrendering company is to be disregarded for corporation tax purposes.

### Details

***Definitions/interpretation*** ***(1)(a)***

"EEA Agreement" is the agreement signed at Oporto on 2 May 1992, as adjusted by Protocol signed at Brussels 1993, which established the European Economic Area (EEA).

"EEA State" is a State which is a contracting party to the EEA Agreement, this consists of all EU Member States and Norway, Iceland and Liechtenstein.

"holding company" is a company whose business consists primarily of the holding of shares in companies which are its 90 per cent subsidiaries and are trading companies.

"relevant Member State" is a Member State of the EU or a Member State of the EEA with which Ireland has a tax treaty (under ***section 826***). Ireland currently has a tax treaty with Norway and Iceland. This definition is deemed to include the United Kingdom, other than for the purposes of subsection (2A) and section 420C .

"relevant territory" means-

(i) a relevant Member State,

(iii) not being such a Member State, a territory with the government of which arrangements having the force of law by virtue of ***section 826(1)*** have been made, or

(v) not being a territory referred to in ***subparagraph (i)*** or ***(ii)***, a territory with the government of which arrangements have been made which on completion of the procedures set out in ***section 826(1)*** will have the force of law.

"tax" in relation to a relevant Member State other than the State is tax which corresponds to Irish corporation tax.

"trading company" is a company whose business consists primarily of the carrying on of a trade or trades.

A company shall be owned by a consortium if 75% or more of the ordinary share capital of the company is directly and beneficially owned by 5 or fewer companies and those companies are then members of the consortium.

Two companies are members of a group of companies if one company is a 75 per cent subsidiary (within the meaning of ***section 9***) of the other company or both of those companies are 75 per cent subsidiaries of a third company.

**Example**

The shareholdings of a number of companies are as follows —

S Ltd is in group relationship with F, G and I Ltd as there is a 75% shareholding link between the companies, namely,

| | | | | |
|---|---|---|---|---|
| F Ltd owns | $\frac{90}{100} \times 90\%$ | of S Ltd | = | 81% |
| F Ltd owns | $\frac{60}{100} \times 60\%$ | of I Ltd | = | 78% |
| F Ltd owns | $\frac{40}{100} \times 40\%$ | of I Ltd | | |

F Ltd owns 90% of G Ltd

B Ltd however is not in a group relationship with F Ltd as the indirect shareholding of the latter is less than 75%, that is —

$$\frac{90}{100} \times \frac{90}{100} \times 90\% = 72.9\%$$

In applying the 75 per cent subsidiary test (***section 9***), share capital of a registered industrial and provident society is to be treated as ordinary share capital. ***(1)(b)***

The group relief provisions apply only to relevant territory resident companies and only as respects activities, which are within the charge to Irish tax. For accounting periods ending after 1 January 2013, in determining whether one company is a 75 per cent ***(1)*** subsidiary of a second company, the second company is to be treated as not being the owner of —

- any share capital directly held by it on its trading account,
- any share capital indirectly held and which is owned directly by a company on its trading account, and
- any share capital held directly or indirectly in a company which is not resident in an relevant territory.

Furthermore, the first mentioned company, referred to above, shall not be treated as a 75% subsidiary of the second company unless that second company is resident in a relevant territory or is listed on a recognised stock exchange.

***Group relief*** ***(2)***

Trading losses and other amounts such as excess management expenses and charges on income on which relief may be given for corporation tax may be surrendered by a company which is a member of a group of companies and the relief given to another company in the same group. This is termed "group relief". Group relief is also available in respect of trading losses and other amounts that are not subject to corporation tax (i.e. losses incurred outside the State). ***(2A)***

Group relief in respect of losses incurred outside the State is only available "vertically upwards", i.e. from a surrendering company that is in an EEA country (other than Ireland) and is a 75% subsidiary of a claimant that is resident in Ireland. [See notes on ***section 420C***.]

***Consortium relief*** ***(3)***

Group relief is also available where the claimant company is a member of a consortium and —

- the surrendering company (being a trading company) is owned by the consortium and is not a 75 per cent subsidiary of any other company,
- the surrendering company (being a trading company) —
  - is a 90 per cent subsidiary of a holding company owned by the consortium, and
  - is not a 75 per cent subsidiary of a company other than the holding company, or
- the surrendering company is a holding company owned by the consortium and is not a 75 per cent subsidiary of any other company.

This form of group relief is often referred to as "consortium relief".

A claim by a consortium member is precluded if a profit on a sale of shares of the surrendering or holding company which that member owns would be treated as a trading receipt of that member. A claim is also precluded if the claimant's share in the consortium in the relevant accounting period of the surrendering or holding company is nil.

Ownership of a company by a consortium is ownership of 75 per cent of the ordinary share capital of the company by 5 or fewer Irish resident companies.

**Example 1**

A consortium of 4 companies owns E Ltd, a trading company with issued shares of 1,000 €1 shares as follows —

| | | |
|---|---|---|
| A Ltd holds | 300 | shares |
| B Ltd holds | 300 | shares |
| C Ltd holds | 200 | shares |

| | | |
|---|---|---|
| D Ltd holds | 200 | shares |
| | 1,000 | |

If E Ltd incurs a trading loss of €10,000 it can "surrender" an appropriate share of the loss to all or any of the claimants A, B, C, D Ltd namely —

A could obtain relief on loss $\frac{300}{1{,}000} \times 10{,}000 = \quad 3{,}000$.

**Example 2**

If a holding company is interposed between the consortium members and the trading company, a loss may also be surrendered, namely, A, B, C and D Ltd own all the shares of F Ltd, a holding company which owns 90 per cent of the shares of E Ltd a trading company. E Ltd may surrender a trading loss incurred by it to A, B, C and D Ltd in the shares determined by their holdings in F Ltd. For example, the issued shares of F Ltd are 1,000 €1 shares of which —

| | |
|---|---|
| A Ltd holds | 400 |
| B Ltd holds | 200 |
| C Ltd holds | 300 |
| D Ltd holds | 100 |
| | 1,000 |

A Ltd could claim $\frac{400}{1{,}000}$

of a trading loss of €10,000 incurred by E Ltd (that is, €4,000).

In this example F Ltd the holding company could also surrender to the consortium members (in the shares appropriate to each) any unrelieved management expenses due to it.

**Example 3**

If however the shareholdings in the holding company F Ltd are —

| | |
|---|---|
| A Ltd | 850 |
| B Ltd | 50 |
| C Ltd | 50 |
| D Ltd | 50 |
| | 1,000 |

then, the trading company E Ltd is a 75 per cent subsidiary of A Ltd by reference to the latter's indirect holding, namely, 85/100 x 90% = 76.5%. In such circumstances consortium relief is not available to A, B, C and D Ltd. E Ltd is in fact in a group relationship with A Ltd (and F Ltd) and may surrender a trading loss to those companies only under the group relief provisions.

### *Sharing of group relief* *(4)*

Two or more claimant companies may share in the surrendered group relief in any proportion desired. (In the case of consortium relief, the fraction which each claimant can claim is determined by reference to the member company's share in the consortium).

### *Payment for group relief*

Any deficiency or subvention payment made by the claimant company to the surrendering company in consideration for the surrender of relief is to be ignored for corporation tax purposes.

## 412 Qualification for entitlement to group relief

## Summary

The abuse of group relief is prevented by providing that the relief is not available unless the parent company not only satisfies the requirement of holding 75 per cent (or 90 per cent in the case of a parent company owned by a consortium) of the ordinary share capital of the subsidiary but also satisfies 2 other tests. These tests are that the parent company be beneficially entitled to not less than —

- 75 per cent (or 90 per cent for consortium relief purposes) of the profits available for distribution to equity holders, and
- 75 per cent (or 90 per cent for consortium relief purposes) of the assets available for distribution to equity holders on a winding-up.

The reason for these tests is that the ordinary issued share capital might be nominal only in value when compared with the total capital of a company and these nominal shares held by the "parent" company could, in the absence of this provision, give rise to a claim to group relief even though the major proportion of "capital" in the "subsidiary" company was held by a company totally unconnected with the "parent" or "subsidiary" company. In this way, the benefit of losses and capital allowances unabsorbed could be transferred for a consideration, from one group of companies or (consortium) to another unconnected company or group of companies.

## Details

### *Entitlement to group relief*

Group relief is not available unless a company not only satisfies the 75 per cent holding test but is also beneficially entitled to 75 per cent of the profits available for distribution to equity holders and to a like share of the assets available for distribution on the winding up of the company. ***(1)***

### *Entitlement to consortium relief*

Where a member of a consortium is entitled to differing percentages of the ordinary share capital, profits and assets of the surrendering company, it can claim relief by reference to the lowest of these percentages only. ***(2)***

Tests similar to those which apply in the case of group relief apply where the company owned by a consortium is a holding company having a holding of 90 per cent in a trading subsidiary which surrenders losses to the consortium members. The 90 per cent percentage test in such a case applies not only to ordinary share capital but also to profits available for distribution and to assets available on winding up. ***(3)***

There is a provision for averaging where any of these percentages fluctuate during an accounting period.

**Example**

Company A holds 75% of the issued shares of company B. An unconnected company X holds the balance of the shares in B Ltd. By reference to the share test of ownership, A and B Ltd form a group and B Ltd could claim a set-off of any loss incurred by A Ltd. However X Ltd, in addition to owning 25% of the shares of B Ltd has, by reason of independent transactions with B Ltd, a majority material interest in that company so that if B Ltd were to be wound up 75% of the distribution on the winding up would not pass to A Ltd. If group relief were to be allowed in such instance, the benefit would accrue to X Ltd (that is, the benefit of the loss relief would pass outside the "group"). The section prevents this by providing that group relief is only available where the parent company not only satisfies the requirement of holding 75% of the ordinary share capital of the subsidiary but is also beneficially entitled to 75% of the profits available for distribution to equity holders and to 75% of the assets available to equity holders on a winding up of the subsidiary.

## 413 Profits or assets available for distribution

### Summary

This section and the 6 following sections provide for the definition of and interpretation of the terms used in ***section 412***. The purpose of this group of sections is to identify the real and ultimate equity interest in the company and it requires that, to qualify for group relief, the parent company must have the required percentage of these ultimate equity interests.

### Details

***"Fixed-rate preference shares"***

"fixed-rate preference shares" are shares which — ***(1) & (2)***

- are issued for "new consideration" (within the meaning of ***section 135***),
- do not carry any conversion right or right to acquisition of additional shares,
- carry rights only to fixed dividends which must not exceed a reasonable commercial return, and
- on repayment carry rights to no more than the original new consideration or an amount reasonably comparable with what would be normal on a Stock Exchange for quoted fixed-dividend shares.

***"Equity holder"***

A "normal commercial loan" is a loan of new consideration or including new consideration (new consideration has the same meaning as in ***section 135***). Excluded are loans which — ***(3)(a)***

- carry conversion rights in respect of shares or securities,
- carry entitlement to interest the amount of which depends on the company's profits or asset value and which exceeds a reasonable commercial return on the new consideration, or
- entitle the loan creditor on repayment of the loan to an amount exceeding the new consideration which was given and which when compared with the Stock Exchange returns on similar issues is excessive.

An "equity holder" includes, as well as a holder of ordinary shares (being all shares other than fixed-rate preference shares), a loan creditor in respect of a non-commercial loan. The reference in ***section 412*** to profits or assets available for distribution to an equity holder does not include profits or assets available for distribution to the equity holder otherwise than by reason of the equity holder's shareholding or loan. ***(3)(b)***

If the holder of ordinary shares acquires a bonus issue of fully paid up fixed-rate preference shares (without any new consideration – within the meaning of ***section 135***), these latter shares, are not to be regarded as fixed-rate preference shares. They, therefore, rank as "ordinary shares" for the purposes of the definition of "equity holder".

If this shareholder then sells the real ordinary shares, the shareholder will still be an "equity holder". This does no harm, however, since the qualifications for group relief imposed by ***section 412*** are additional to those in ***section 9***, which require that the parent holds 75 per cent (or 90 per cent) of the ordinary share capital; and ***section 413*** does not affect ***section 9***.

Included as an equity holder is any person who uses for the purposes of that person's trade assets which are owned by the company and who has directly or indirectly provided the funds for the purchase by the company of those assets. This provision is not to apply in the case of a bank which makes a loan in the ordinary course of its banking business. ***(5)&(6)***

The term “equity holder” is also used in the following sections, namely, ***sections 413(5), 414(1), 415(1), (3)*** & ***(4)(b), 416(1), (2)*** & ***(4), 417(1), (2)*** & ***(3)*** and ***418***. All of these sections, however, merely provide additional rules for the purposes of ***section 412***.

***Loan creditor***

For the purpose of the definition of “equity holder”, the definition of “loan creditor” contained in ***section 433(6)*** (other than ***paragraph (b)*** of that subsection) is applied. Loan creditor includes any person holding redeemable loan capital issued by the company and any person to whom the company is indebted for money borrowed or capital assets acquired by it, and also any person entitled to a debt from the company in return for a right to receive income and any person who has received or will receive substantially more from the company than the value of the consideration the person has given it. ***Paragraph (b)*** of ***section 433(6),*** which excludes a bank in respect of money lent in the ordinary course of its banking business, is not applied, since a loan creditor will be an equity holder only if the loan is not a normal commercial loan. ***(4)***

## 414 Meaning of “the profit distribution”

### Summary

This section defines the profits available for distribution to equity holders for the purposes of ***section 412***. The percentage to which one company is entitled of any profits available for distribution is fixed as the percentage to which it would be entitled on a full distribution in money of the profits of the other company for the accounting period or, if there are no profits in the accounting period, profits of €100. The profits referred to are the commercial profits (not profits as computed for tax purposes) and, accordingly, are calculated after deducting fixed rate preference dividends and normal commercial loan interest.

The section is necessary because strictly a shareholder is not entitled to any part of the profits unless and until a dividend is declared. The token figure of €100 provides for the case where there are no commercial profits in the accounting period and therefore no basis on which to calculate the equity holders underlying percentage entitlements.

### Details

The percentage to which one company is entitled of any profits available for distribution is the percentage to which it would be entitled in the relevant accounting period (see ***section 419***) on a distribution in money of — ***(1)***

- the profits of the other company for that accounting period (whether distributed or not), or
- if there were no profits in that accounting period, profits assumed to be €100.

This distribution is referred to as “the profit distribution”. ***(2)***

For the purposes of the profit distribution, it is assumed that no repayment of capital or secured principal is made unless that repayment is a distribution.

Where an equity holder is entitled by reason of being an equity holder to a payment which apart from this subsection would not rank as a distribution, the payment is nevertheless treated as an amount to which the equity holder is entitled on the profit distribution. ***(3)***

## 415 Meaning of “the notional winding up”

### Summary

This section defines for the purposes of ***section 412*** what is meant by assets available to another company on a winding-up. The percentage to which one company is entitled of any assets of another company available for distribution to its equity holders on a winding-up is the percentage of the assets to which the first company would be entitled if the other company were to be wound up and on that winding-up the value of the net assets were equal to the excess (if any) of the balance sheet assets at the end of the accounting period over the total balance sheet liabilities. The total balance sheet liabilities is not to include the liabilities to the equity holders as equity holders. Where there is no such excess or if a balance sheet is not drawn up, a token figure of €100 is to be used: without such a provision, there would for this purpose be no basis on which to calculate the equity holders percentage entitlements. There is provision to prevent manipulation of the assets test by an artificial "parent" inflating a "subsidiary's" assets and qualifying itself under the 75 per cent test by putting equity capital into the subsidiary which the subsidiary immediately lends back to the parent.

## Details

The percentage to which one company is entitled of any assets of another company available to its equity holders on a winding up is the percentage which the first company would get if the other company were to be wound up and on the winding up the value of the net assets were equal to — ***(1)***

- the excess, if any, of the assets of the company shown in the balance sheet of the company at the end of the relevant accounting period over the total liabilities (other than liabilities to equity holder as such), or
- an assumed token amount of €100 if there was no excess or if there was no balance sheet at the end of the relevant period.

Such a winding up is referred to as "the notional winding up". ***(2)***

Where an equity holder would receive an amount of assets an equity holder on a notional winding up and that amount would not, apart from this subsection, be treated as a distribution of assets, the amount nevertheless is to be treated as an amount to which the equity holder is entitled on the distribution of assets. An equity holder in this context includes a person who is a loan creditor of the company in respect of a loan which is not a normal commercial loan. ***(3)***

Manipulation of the "assets" test laid down by ***section 412(1)(b)*** by a parent company increasing its shareholding in an associated company to 75 per cent at no real cost to itself is prevented. If a company, by subscribing for additional shares, increases its holding to 75 per cent of the total, it will become entitled to 75 per cent of the assets on a notional winding up, and thus pass the test under ***section 412(1)(b)*** and ***subsection (1)(a).*** The amount subscribed for the additional shares might, however, be returned to the parent company as a loan. ***(4)***

Were it not for the subsection the parent company would now be entitled to a 75 per cent interest in the subsidiary although it continues to have the cash it subscribed. The subsection provides that, in such a case, both the amount of the assets of the subsidiary company and the amount of those assets to which the parent company would be entitled on a notional winding up are to be reduced by the amount so returned.

**Example**

Company B with assets worth €45,000 has issued share capital €40,000 of which company A holds €15,000. Company A subscribes for 60,000 additional shares for which it pays €60,000 and A now holds 75,000 of the 100,000 shares issued by B while the assets of B have increased to €105,000. B now returns the €60,000 to A as a loan. A has thus effectively got its money back but, on a winding up of B, it would still be entitled to 75 per cent of B's assets. B's assets, including the €60,000 on loan to A, are still €105,000 of which A's 75 per cent share would be €78,750.

The effect of the subsection is that the €60,000 is to be deducted from the total assets (which will thus be reduced to the original €45,000) and from A's share of the assets on a notional winding up (that is, a reduced amount of €18,750). As this is less than 75 per cent of €45,000 the test under ***section 412(1)(b)*** will not be satisfied.

## 416 Limited right to profits or assets

### Summary

This section is designed to prevent a possible abuse and applies where an equity holder whose rights in a distribution of profits or assets on a winding up are limited by reference to a specified amount or amounts. For example, an equity holder may be entitled to dividends up to a total of €5,000 but no more, or be entitled to all the assets up to €10,000 on a winding up but to only one per cent of the excess. Such arrangements could be used to manipulate the purported interests in a company for the purpose of qualifying for group relief. The section prevents such manipulation.

**Example**

Company A is set up as a leasing company, with assets €1,000,000 (paid for by means of a bank loan) which will be leased for a rental of €150,000 a year commencing towards the end of its first accounting period.

Company B holds 5 per cent of the shares in A, and is entitled to 100 per cent of the dividends paid by A up to a maximum of €5,000 and to 100 per cent of the assets on a winding up to a maximum of €10,000.

Company C holds 95 per cent of the shares in A and is entitled to 100 per cent of the excess of A's dividends over €5,000 and on a winding up to 100 per cent of the assets over €10,000.

In Company A's first accounting period there would be no (or minimal) profits and the assets (after deducting the bank loan) would also be little or nothing. B would be entitled to more than 75 per cent of such minimal profits or assets, or of any notional token amounts, and could therefore claim the surrender to it as group relief of A's capital allowances, which might be 100 per cent of the cost of the assets. Yet when significant profits begin to accrue and A's net asset position begins to improve, from the second accounting period onwards, company C would clearly have the major share.

The section prevents this by providing that, in calculating B's interest, the limited rights attaching to its equity holding are to be ignored. Its dividend and assets entitlement would thus be taken to be the normal amount according to its shareholding, namely, 5 per cent.

### Details

The section applies to equity holders whose rights to dividends, interest or assets are limited in any way. Where the section applies, the percentage of profits and the percentage of assets to which a company is entitled shall be computed on the basis that all limitations on the rights of equity holders have been waived. ***(1)&(2)***

If on a profit distribution, the percentage of profits determined in accordance with ***subsection (2)(a)*** is less than the percentage arrived at by computing the share of profits in accordance with ***section 414(1),*** the lower percentage is to be taken for the purposes of the 75 per cent test. ***(3)***

Arrangements in relation to a notional winding up are provided for similar to those in ***subsection (3)*** in relation to a distribution of profits. ***(4)***

## 417 Diminishing share of profits or assets

### Summary

This section applies where there might be an arrangement whereby an equity holder's share in a distribution of profits, or of assets on a winding up, would change in a later accounting period or if such rights differ with the passage of time. For example, shares might lose the right to participate in profits or in assets on a winding up or other shares might gain such rights. This might be used to enable one company to have the 75 per cent entitlement at a time when it would be advantageous for group relief purposes. This section prevents such a situation arising by ensuring that for the purposes of the 75 per cent test whichever is the lower of the equity holder's present or future rights is to be taken into account.

## Details

The section applies if at any time in a relevant accounting period (see ***section 419***) any equity holder has such shares or securities in the company as would, if a distribution of profits or sharing of assets of the company were made in respect of the shares or securities in a later accounting period (rather than in that relevant accounting period), entitle the equity holder to a percentage on the distribution or profits or a sharing of assets different from the percentage in relation to such matters to which the equity holder is entitled in the relevant accounting period. ***(1)***

Where the section applies, the percentage of profits on a profit distribution or percentage of assets on the notional winding up is to be determined for the relevant accounting period as if the rights attaching to the shares or securities for the relevant accounting period were the same as those of the later accounting period. ***(2)***

Where in a relevant accounting period an equity holder has shares or securities in respect of which there are arrangements (for this purpose "arrangements" means arrangements of any kind, whether in writing or not – see ***section 427(1)***) by virtue of which the equity holder's entitlement under the arrangements could differ from his entitlement if there were no arrangements. In such circumstances it is to be assumed that effect would be given to the arrangements in the later accounting period and, accordingly, the shares or securities are to be treated as if the variation in the equity holder's entitlement to profits or assets resulting from this assumption was the same as the entitlements to vary rights referred to in ***subsection (1)***. ***(3)***

The percentage entitlement as determined under ***subsections (2)(a)*** and ***(2)(b)*** is to be substituted for the actual percentage entitlement for the relevant period where this is less than the actual entitlement. ***(4)***

In any case where there is a limitation of the actual distribution for the relevant accounting period so that this section and ***section 416*** apply, the 2 sections are to be applied separately (in relation to the profit distribution and the notional winding up) — ***(5)***

- on the basis specified in ***subsection (2)***, and
- disregarding that subsection,

and the lowest percentage emerging is the one for use in applying the 75 per cent test.

**Example**

In the example given in the notes on ***section 416*** it might be possible to circumvent that section by allotting to company B 75 per cent of the ordinary share capital in company A. Under ***section 416*** the entitlement to a maximum dividend of €5,000 or maximum share of assets €10,000 would still be disregarded, but the entitlement of company B would be taken to be 75 per cent by virtue of the 75 per cent shareholding. If, however, there is a further arrangement that the dividend or asset rights attaching to these shares will be or may be reduced at some future time, then, by virtue of this section, ***section 416*** applies as if those future reduced rights were operative in the relevant accounting period, so that the rights will be taken to be less than 75 per cent and company B will not pass the test.

## 418 Beneficial percentage

This section provides that a beneficial entitlement may be traced through a chain of companies.

For the purposes of ***section 412*** and ***414*** to ***417***, a company's beneficial percentage entitlement in another company means its entitlement by virtue of any shares it holds in that other company together with its entitlement by virtue of shares in other companies which themselves hold shares in that other company.

**Example**

If company A holds 50 per cent of the shares in company B, and also 50 per cent of the shares in company C, while Company C holds the other 50 per cent of company B, then A's percentage of B (provided ***section 417*** does not apply) is —

| | |
|---|---|
| Own holding | 50 per cent |
| 50 per cent of C's holding, (i.e. 50 per cent of | |
| 50 per cent) | 25 per cent |
| A's holding in B is, therefore | 75 per cent |

Company A therefore qualifies under the 75 per cent test in relation to Company B.

## 419 The relevant accounting period, etc

For the purposes of this Chapter, "the relevant accounting period" is — ***(1)***

- in a case where the ownership tests to determine whether there is a group relief situation have to be applied as at a particular time (that is, group relief apart from consortium relief), the accounting period current at that time, and
- where the ownership tests have to be applied by reference to a particular accounting period (that is, consortium relief), the accounting period in which the ownership tests have to be applied.

For the purposes of ***sections 413*** to ***418*** a loan to a company is treated as a security whether or not it is secured and, if secured, irrespective of the nature of the security. ***(2)***

## 420 Losses, etc which may be surrendered by means of group relief

### Summary

This section provides for group relief in respect of trading losses, capital allowances, expenses of management and charges on income. Where for an accounting period a surrendering company has incurred a trading loss, the loss may be set off against the claimant company's profits for a corresponding accounting period.

Group relief is provided in respect of capital allowances which are given by way of discharge or repayment of tax or in charging income from rents. Relief is not given, however, on amounts carried forward from a previous accounting period.

Group relief is provided in respect of management expenses of investment companies. The relief to a claimant company (which need not itself be an investment company) is limited to any excess of current management expenses of an investment company over current profits for the accounting period. For this purpose, the profits of the surrendering company against which the excess is measured are those for the accounting period before deduction of any management expenses or the set-off of any allowances carried forward. Group relief for management expenses is not allowable in the case of life assurance business.

Group relief is provided for charges on income. The relief is limited to the excess of charges paid in the period over the profits actually arising in the period.

Where the claimant company is a member of a consortium, a fraction only of the loss or excess may be set off and that fraction is equal to the company's share in the consortium subject to any further reduction to be made in ascertaining the amount for a corresponding accounting period by virtue of ***section 422***.

## Details

### *Trading losses*

Where for an accounting period a surrendering company has incurred a trading loss in a trade which is within the charge to corporation tax in the State, that loss may be set off against the claimant company's profits for a corresponding accounting period. As a trading loss computed for the purposes of ***section 396(2)*** includes any capital allowances to be made in taxing the trade for the period, the losses surrendered will include those capital allowances. ***(1)***

Excluded from group relief is a loss incurred in a trade carried on abroad the profits of which are assessable under Case III of Schedule D (***section 396(4)***), or a farm loss which does not qualify for loss relief because the farming was not carried on a commercial basis with a view to making a profit (***section 663***).

Also excluded are losses of a life assurance company to the extent that such set-off would reduce the profits attributable to policyholders of the company.

### *Capital allowances*

Group relief is available in respect of capital allowances which are given by way of discharge or repayment of tax or in charging rents and analogous income under Case V of Schedule D, to the extent that the allowances are not exhausted by associated current income of the accounting period. Group relief is not to be given on amounts carried forward from a previous accounting period. ***(2)***

### *Management expenses*

Group relief is available in respect of management expenses of investment companies. The relief to be transferred to a claimant company (which need not itself be an investment company) is limited to any excess of current management expenses of an investment company over current profits of the accounting period. ***(3)***

In determining the amount of any such excess, the profits of the surrendering company against which the management expenses are to be measured are the profits of the accounting period before deduction of any management expenses or the set-off of any allowances carried forward. ***(4)***

Group relief in respect of management expenses is not allowable in the case of a life assurance business. ***(5)***

### *Charges on income*

Group relief for charges on income is limited to the excess of charges paid in the period over the profits actually arising in the period before any deduction for losses, capital allowances or management expenses of any other period. ***(6) & (7)***

### *Consortium relief*

Where the claimant company is a member of a consortium, a fraction only of the loss or excess may be set off in accordance with the preceding provisions. The fraction which may be set off is to equal the company's share in the consortium subject to any further reduction to be made in ascertaining the amount for a corresponding accounting period by virtue of ***section 422(2)***. ***(8)***

### *"New basis" Life assurance business*

Losses arising from life business which is "new basis business" as defined in ***section 730A*** can be surrendered by way of group relief. ***(9)***

**Example**

A Ltd for the accounting period of 12 months ending on 31.12.2002 has the following income —

| | | |
|---|---|---|
| Trading income | | €500,000 |
| Rental income | €150,000 | |

and pays charges of €10,000.

The company owns 75 per cent of the shares in B Ltd, which incurs a trading loss of €300,000 for the same accounting period. A and B are in group relationship and A claims and B surrenders the loss of €300,000.

The corporation tax computations for the accounting period are as follows —

Company A

| | | | |
|---|---|---|---|
| Trading income | €500,000 | | |
| Rental income | €150,000 | | |
| | €650,000 | | |
| Charges | €10,000 | | |
| | €640,000 | | |
| Group relief | €300,000 | | |
| | €340,000 | x 16% = | €54,400 |

Company B

| | |
|---|---|
| Trading income | NIL |

## 420A Group relief: relevant losses and charges

## 420A Group relief: relevant losses and charges

### Summary

This section places a ring-fence on the offset of losses under ***section 420*** in a group relief context. Under ***section 420*** losses incurred in an accounting period by a company which is a member of a group can be offset against profits of a fellow group company for a corresponding period.

### Details

The terms "relevant trading income" and "relevant charges on income" have the meanings set out in ***section 243A***. ***(1)***

**The term "relevant trading loss" means** trading losses incurred by a company in an accounting period other than so much of the loss as is incurred in an excepted trade (i.e. a trade the income from which is taxable at the 25 per cent rate). ***(2)***

The offset of trading losses under group relief rules does not apply in the case of relevant trading losses.

Instead, such losses may be offset against certain income of a fellow group company for its corresponding accounting period as reduced by any charges or losses offset under ***sections 243A*** and ***396A***. The income concerned is: ***(3)***

- relevant trading income,
- income of a trade of non-life insurance, reinsurance and investment income of a life assurance company which is attributable to its shareholders, and
- foreign dividend income which is chargeable at the 12½ rate of tax under ***section 21B***.

The offset under this section does not apply to losses incurred in a trade the income from which is chargeable to tax under case III. In addition, a loss may not be offset against profits of a life assurance company that are attributable to policyholders/annuitants. ***(3)(b)***

Group relief under this section is to be set off after allowing trading losses brought forward under ***section 396*** but before terminal loss relief carried back under ***section 397***. ***(4)***

In the case of a consortium relief, only a fraction (reflecting the member's interest in the consortium) of a relevant trading loss or relevant trading charges may be offset. ***(5)***

## 420B Group relief: Relief for certain losses on a value basis

## 420B Group relief: Relief for certain losses on a value basis

### Summary

This section provides group relief on a value basis for —

- trading losses which have been incurred by a surrendering company in an accounting period in a trade the income from which is taxable at the standard rate of corporation tax, and
- charges that are paid for an accounting period wholly and exclusively for the purposes of a trade carried on by a company the income from which is taxable at the standard rate of corporation tax.

Relief is given by reducing corporation tax of a claimant company for the corresponding accounting period by an amount determined by applying the relevant corporation tax rate to the amount of the unrelieved loss. Corporation tax which is referable to profits of policyholders is excluded from relief under this section.

### Details

"relevant corporation tax" is the corporation tax which can be reduced by the relief. It is the corporation tax which would be chargeable for the accounting period apart from: ***(1)***

- tax withheld by the company from certain payments (***sections 239*** and ***241***) which have been paid over to Revenue, and
- surcharges on undistributed income (***sections 440*** and ***441***).
- any corporation tax attributable to a life business (within the meaning of ***section 706***) where that corporation tax is referable to profits of policyholders.

"relevant trading charges on income" and "relevant trading loss" have the same meaning as they have respectively in ***sections 243A*** and ***396A.*** A relevant trading loss is a trading loss incurred by a company in an accounting period other than so much of the loss as is incurred in an excepted trade – (i.e. a trade the income from which is taxable at the 25 per cent rate).

Where a surrendering company has incurred a relevant trading loss or has an excess of relevant trading charges which cannot be relieved under ***section 243A, 396A or 420A***, a claimant company can get relief for the losses or excess of charges. ***(2)***

Where a company claims relief under this section the relevant corporation tax for the accounting period is to be reduced by an amount determined by applying the standard rate to those losses or charges. ***(3)***

Special rules are provided to determine the amount of the loss or charges which are to be regarded as having been used. The amount of losses or charges which are to be regarded as used is determined by regrossing the loss relief given at the standard corporation tax rate. The amount so determined is regarded as relieved. ***(4)***

## 420C Group relief: Relief for certain losses of non-resident companies

### Summary

This section sets out the conditions under which a parent company resident in Ireland may get group relief for losses of a subsidiary company resident in another EU/EEA Member State. Where the provision is applicable, it allows an Irish-resident company to offset against its taxable income the losses of an EU/EEA resident subsidiary. The losses are available for relief "vertically upwards" from the non-resident subsidiary to the Irish-resident company, but are only available when certain conditions are met. Losses that are available for offset against profits in another territory, or that can be used at any time by setting them against any company's profits in the country where the loss is incurred, are not covered by the provision. The section includes an anti-avoidance provision to disallow losses where arrangements are entered into primarily to secure an amount that would qualify for the group relief.

### Details

The following definitions are used in the section: ***(1)***

"foreign loss" is the amount of the non-resident company's loss that falls within the "vertically upwards" criterion in ***section 411(2A)***.

"relevant foreign loss" is the part of a foreign loss that is allowed under the provision. This must meet the following conditions:

- It must be of a type that would be allowed under "Irish rules" – i.e. what an Irish surrendering company would be able to give up to a claimant under ***section 420*** or ***section 420A*** of the TCA.
- It must be computed under the EEA country's tax law.
- It must not be attributable to a branch or agency in the State (i.e. ***section 25***).
- It must not be available for use otherwise in the State.
- It must be a trapped loss – i.e. a loss where the possibilities for relief in the surrendering Member State have been exhausted. Trapped losses are defined in ***section 420C(2)***.
- It must not be available for surrender, relief or offset in a territory outside the State or the surrendering state (for example, horizontally under a different rule in an other Member State).

"surrendering state" is the EEA State where the company surrendering the losses is resident.

A trapped loss is defined as a loss that, under the laws of the surrendering state, cannot be used in any accounting period in that country. In other words, it cannot be used in the ***(2)*** current accounting period, it cannot be carried back, it cannot be used in the future or it cannot be surrendered to another company.

Losses that are incurred by non-resident companies and that meet all the conditions for foreign loss relief can be treated (with any necessary modifications) as if they were relevant trading losses under ***section 420A/420B*** of the Taxes Consolidation Act. Relief for foreign losses is given after other loss relief. ***(3)***

The section does not apply where the losses arose as a result of arrangements the purpose of which was to obtain the relief. ***(4)***

The claimant company must claim the relief within 2 years of the loss being incurred – this is subject to later claims being allowed under ***subsection (6)***. ***(5)***

If circumstances change in the surrendering state so that a loss that could be carried forward subsequently becomes unavailable for carryforward, then Revenue will allow a claim to be made at that later stage (within 2 years of the condition being met). ***(6)***

An accounting period in respect of a foreign subsidiary for the purposes of applying this provision is defined. (This is necessary because the foreign subsidiary doesn't fall within ***section 27*** of the Taxes Consolidation Act, and so does not have an accounting period for the purposes of the Tax Acts.) ***(7)***

Revenue has power to obtain information for the purposes of giving effect to the section. ***(8)***

## 421 Relation of group relief to other relief

### Summary

This section provides that group relief can be allowed only against the claimant company's profits for the accounting period as reduced by any other reliefs except those derived from a subsequent accounting period. For this purpose, it is to be assumed that the claimant company claims any relief to which it would be entitled under ***section 308(4)*** in respect of capital allowances or under ***section 396(2)*** in respect of losses.

Group relief claimed against the profits of any accounting period must be deducted before any relief derived from a subsequent accounting period can be given against those profits.

### Details

The term "relief derived from a subsequent accounting period" means — ***(1)***

- relief under ***section 308(4)*** for capital allowances of an accounting period subsequent to the period for which group relief is claimed,
- relief under ***section 396(2)*** for a loss of an accounting period subsequent to the accounting period for which group relief is claimed, and
- terminal loss relief under ***section 397*** on a cessation of trading in an accounting period subsequent to the one in which group relief is being claimed.

Group relief, in accordance with ***section 420***, is to be allowed as a deduction against total profits of the claimant company before those profits are reduced by any relief deriving from a subsequent accounting period (for example, the carry-back of a trading loss of a subsequent period under ***section 396(2)***), but as reduced by any other tax relief including relief for past losses or other allowances brought forward from previous periods. ***(2)***

Such other relief is to be determined on the assumption that the claimant company claims any relief available to it under ***section 308(4)*** (excess of capital allowances) or ***section 396(2)*** (loss in trade). ***(3)***

Group relief for an accounting period must be given before relief deriving from a subsequent accounting period is given against the profits of that accounting period. ***(4)***

**Example**

A Ltd holds 75 per cent of the shares of B Ltd, and for the accounting period of 12 months to 31.12.2001 the accounts and computations show the following —

A Ltd

| | | |
|---|---|---|
| Trading profits | €30,000 | |
| Less losses forward (section 396(1)) | (€15,000) | |
| | €15,000 | |
| Profit rent | €5,000 | |
| Capital allowances | (€8,000) | (€3,000) |
| Charges paid | (€6,000) | |

B Ltd

| | |
|---|---|
| Trading loss | (€10,000) |
| Untaxed interest | €2,000 |
| Taxed interest | €1,000 |

B Ltd claims relief under ***section 396(2)*** and A Ltd claims group relief in respect of the maximum loss which B Ltd can surrender.

The corporation tax computations are as follows —

A Ltd

| | | |
|---|---|---|
| Trading profits | | €15,000 |
| Profit rents €5,000 – less capital allowances | (€5,000) | Nil |
| | | €15,000 |

Less capital allowances available for relief under ***section 308(4)***

| | | |
|---|---|---|
| €8,000 – €5,000 | (€3,000) | |
| Charges | (€6,000) | (€9,000) |
| | | €6,000 |
| Group relief surrendered by B Ltd | | (€6,000) |
| Profit for tax purposes | | NIL |

B Ltd

| | | |
|---|---|---|
| Trading profits | | NIL |
| Untaxed interest | | €2,000 |
| | | €2,000 |
| Trading loss (section 396(2)) | | (€2,000) |
| | | NIL |
| Trading loss | | (€10,000) |
| Less allowed above | €2,000 | |

| | | |
|---|---|---|
| Allowed to A Ltd as group relief | €6,000 | €8,000 |
| Loss for carry-forward | | (€2,000) |

## 422 Corresponding accounting periods

### Summary

This section defines a claimant company's corresponding accounting period as one which falls wholly or partly within the accounting period of the surrendering company and provides for an appropriate restriction by apportionment on a time basis where periods do not coincide.

### Details

An accounting period of a claimant company falling wholly or partly within an accounting period of the surrendering company is to correspond to that accounting period. ***(1)***

An appropriate restriction of group relief where periods do not coincide applies. In such a case the relief is limited to the lower of — ***(2)***

- the amount that may be set off against total profits under section 420, set off against income specified in section 420A(3) or which may reduce the relevant corporation tax under section 420B(3), as the case may be, apportioned on a time basis (the apportionment is computed by reference to the length that the common period bears to the whole of the length of the surrendering company's accounting period), and
- the amount of the total profits under section 420, the income specified in section 420A(3) or relevant corporation tax under of section 420B(3), as the case may be, against which the amount, referred to above may be set off, apportioned on a time basis (the apportionment is computed by reference to the length that the common period bears to the whole of the length of the claimant company's accounting period).

**Example 1**

Company A has a loss of €100,000 for its accounting period of 12 months to 31 December, 2002.

Company B has a profit of €80,000 for its accounting period of 12 months to 31 March, 2003.

The loss which A can surrender is limited to so much of the loss, €100,000 as is apportionable to the common period, (the 9 months to 31 December, 2002) namely —

$$9/12 \times 100,000 = 75,000.$$

The profits of B against which the surrendered loss can be set off is limited to so much of its profits, €80,000, as is apportionable to the common period, namely —

$$9/12 \times 80,000 = 60,000.$$

The amount on which group relief can be given is therefore €60,000 only.

If B's profits were €120,000, the amount apportionable to the common period would be 9/12 x €120,000 = €90,000, and the amount to be relieved would be €75,000.

**Example 2**

Company A has a Case I loss of €110,000 for its accounting period of 12 months to 31 December, 2024.

Company B has Case I income of €75,000 for its accounting period of 12 months to 30 June, 2025.

The Case I loss which A can surrender is limited to so much of the Case I loss, €110,000 as is apportionable to the common period, (the 6 months to 31 December, 2024) namely —

6/12 x 110,000 = 55,000

The Case I income of B against which the surrendered loss can be set off is limited to so much of its Case I income, €75,000, as is apportionable to the common period, namely —

$$6/12 \times 75,000 = 37,500$$

The amount on which group relief can be given is therefore €37,500 only.

If B's Case I income was €150,000, the amount apportionable to the common period would be 6/12 x €150,000 = €75,000, and the amount to be relieved would be €55,000.

## 423 Company joining or leaving group or consortium

### Summary

This section regulates the position in regard to companies joining or leaving a group or consortium. Group relief is to be given only if the surrendering and claimant companies are members of the same group or consortium during the whole of the surrendering company's accounting period to which the claim relates and during the whole of the corresponding accounting period of the claimant company. (The companies need not be in group relationship at the time when the relief is claimed, which may be some time after the relevant accounting periods).

Where 2 companies become or cease to be members of the same group, an accounting period for each company is deemed to end and a new one to commence (unless an actual accounting period then ends). In such circumstances the losses or other amounts for which relief is to be granted and the profits of the claimant company against which those losses or other amounts are to be set are arrived at by apportionment on a time basis. Similar provisions apply when a company begins or ceases to fulfil the conditions for consortium relief either as a surrendering company or as a claimant company.

### Details

Group relief is given only if the surrendering and claimant companies are members of the same group or consortium during the whole of the surrendering company's accounting period to which the claim relates and during the whole of the corresponding accounting period (see ***section 422***) of the claimant company. ***(1)***

Where 2 companies become or cease to be members of the same group, an accounting period for each company is deemed to end and a new one to begin at that time (unless an actual accounting period then ends). In such a situation the losses or other amounts of an actual accounting period in respect of which relief is to be granted are to be apportioned on a time basis. In respect of the claimant company, the total profits, income or relevant corporation tax for its actual accounting period, against which group relief may be allowed in accordance with section 421(2), 420A(3) or 420B(3), as the case may be, are also to be time apportioned. ***(2)***

Where one company is the surrendering company and the other company is the claimant company — ***(3)***

- references to the various terms contained in sections 420, 420A and 420B are to be construed having regard to ***subsection (2),***
- references to accounting periods in ***section 422*** and ***subsection (1)*** are to be similarly construed,
- references to the amounts in the formula in section 422(2) are also to be similarly construed.

***Subsections (2)*** and ***(3)*** are applied to a company beginning or ceasing to fulfil the conditions for consortium relief as either a surrendering or a claimant company. ***(4)***

**Example 1**

Company A acquires a 75 per cent subsidiary, B, on 31 March, 2002, and another 75 per cent subsidiary, C, on 30 June, 2002. All 3 companies make up their accounts to 31 December and their results for the 12 months to 31 December, 2002 are —

| | |
|---|---|
| A. Excess management expenses | €36,000 |
| B. Trading profits | €20,000 |
| C. Trading profits | €30,000. |

B claims group relief from A with A's consent and is entitled to the smaller of —

| | |
|---|---|
| 9/12 * €36,000 = | €27,000 |
| OR 9/12 * €20,000 = | €15,000 |

C claims group relief from A with A's consent and is entitled to the smaller of —

| | |
|---|---|
| 6/12 * €36,000 = | €18,000 |
| OR 6/12 * €30,000 = | €15,000 |

The section limits the group relief which B and C can claim to €15,000 each.

This would be further restricted by ***section 428*** because A was not in group relationship with either B or C in the 3 months to 31 March, 2002. The maximum group relief which A can surrender is therefore limited by ***section 428***, to 9/12 * €36,000 = €27,000. Subject to the limitations imposed by the present section, this can be divided between B and C as the companies themselves choose. Thus, if the restriction under ***section 428*** is applied to C, the group relief would be €15,000 to B and €12,000 to C.

**Example 2**

Company A acquires 75 per cent subsidiaries B and C as in Example 1. The results for the 12 months to 31 December, 2002 are —

| | |
|---|---|
| A. Excess management expenses | €36,000 |
| B. Trading profits | €40,000 |
| C. Trading loss | (€30,000) |

B claims group relief from A with A's consent and is entitled to the smaller of —

| | |
|---|---|
| 9/12 * €36,000 = | €27,000 |
| OR 9/12 * €40,000 = | €30,000 |

B also claims group relief from C with C's consent and is entitled to the smaller of —

| | |
|---|---|
| 6/12 * €30,000 = | €15,000 |
| OR 6/12 * €40,000 = | €20,000 |

Since B was not in group relationship with either A or C in the 3 months to 31 March, 2002, the maximum group relief with B can obtain from A and C in respect of the accounting period to 31 December, 2002 is further restricted by ***section 428*** to 9/12ths of B's profit for that accounting period, namely 9/12 *€40,000 = €30,000. The companies have, therefore, to choose how this restriction is to be applied. They may, for example, apply it to C, in which case A surrenders €27,000 while C surrenders only €3,000.

**Example 3**

All the shares in company A are held, equally, by companies B, C, D and a bank, E. The companies B, C, D and E thus are a consortium. All 5 companies make up their accounts to 31 December and for the 12 months to 31 December, 2002, company A has a trading loss, €50,000, and each of the other companies has ample profits to absorb any relief surrendered by A. All the companies, including E, consent to a claim for consortium group relief, which is dealt with as follows —

| | |
|---|---|
| B. 25 per cent of A's loss | €12,500. |

| | |
|---|---|
| C. 25 per cent of A's loss | €12,500. |
| D. 25 per cent of A's loss | €12,500. |
| | €37,500. |

The bank E is by ***section 411(2)*** precluded from claiming group relief since a profit on a sale of its shares in A would be a receipt of its trade.

A may carry forward the balance of its loss, €12,500 (that is, €50,000 – €37,500 surrendered for group relief).

**Example 4**

Company A acquires a 75 per cent subsidiary, B, on 31 March, 2025, and another 75 per cent subsidiary, C, on 30 June, 2025. All 3 companies make up their accounts to 31 December and their results for the 12 months to 31 December, 2025 are —

| | | |
|---|---|---|
| A. | Case I loss | (€65,000) |
| B. | Case I income | €70,000 |
| C. | Case I loss | (€50,000) |

B claims group relief from A with A's consent and is entitled to the smaller of —

| | |
|---|---|
| 9/12 * €65,000 = | €48,750 |
| OR 9/12 * €70,000 = | €52,500 |

B also claims group relief from C with C's consent and is entitled to the smaller of —

| | |
|---|---|
| 6/12 * €50,000 = | €25,000 |
| 6/12 * €70,000 = | €35,000 |

Since B was not in group relationship with either A or C in the 3 months to 31 March, 2025, the maximum group relief with B can obtain from A and C in respect of the accounting period to 31 December, 2025 is further restricted by ***section 428*** to 9/12ths of B's Case I income for that accounting period, namely 9/12 *€70,000 = €52,500. The companies have, therefore, to choose how this restriction is to be applied. They may, for example, apply it to C, in which case A surrenders €48,750 while C surrenders only €3,750.

## 424 Effect of arrangements for transfer of company to another group, etc

### Summary

This section is designed to prevent an abuse of group relief where, for example, because a parent company cannot, by reason of an insufficiency of profits, benefit from capital allowances or losses of a subsidiary, it transfers the subsidiary to another group in a position to benefit by way of group relief from the subsidiary's losses, etc. When the subsidiary's losses, etc have been stripped the subsidiary reverts to the original group. The effect of the section is that where any arrangements are made by which a company may be detached from one group relationship and joined to another group or where it may be controlled from outside the group the company is to be treated as having terminated the group relationship. The same approach with certain necessary modifications is applied to consortia.

## Details

### *Definitions*

"third company" is, in the case of a group, any company outside the original group and, in the case of a consortium, any company other than the trading company or a holding company of which the trading company is a 90 per cent subsidiary and which is itself owned by the consortium. ***(1)***

"control" has the meaning given in ***section 11***.

### *Successions*

A company succeeds to a trade or a part of a trade of another company where ***section 400*** (company reconstructions without change of ownership) applies or the 2 companies are connected with each other (see ***section 10***). ***(2)***

### *Artificial transfer of company from one group to another*

Where any arrangements (whether in writing or not) are made by which a company or its trade is detached from one group and joined to another, or by which control of the company may be moved outside the group or by which the company's trade may be taken over by a third company, the company is to be treated as not being a member of the first group. ***(3)***

Group relief is not allowed for losses, etc of a trading company which is owned by a consortium or is a 90 per cent subsidiary of a holding company owned by a consortium if there are arrangements by which — ***(4)***

- the trading company may become a 75 per cent subsidiary of a third company (it would then be prevented by ***section 411(2)*** from surrendering its loses, etc to the consortium),
- control of it may be taken over by any person or persons who hold less than 50 per cent of its ordinary shares,
- any person or persons may obtain control of 75 per cent or more of the voting rights in the trading company (this would give control, as defined in ***section 11***, of that company), or
- the trading company's trade may be taken over by a third company.

These restrictions apply equally to a trading company and to a holding company of a trading company where the holding company is owned by a consortium. ***(5)***

## 425 Leasing contracts: effect on claims for losses of company reconstructions

## Summary

This section is designed to prevent a possible abuse of capital allowances in respect of machinery and plant purchased and then leased. The allowance with which the section is concerned are the initial allowance (***section 283***) and accelerated capital allowances (***section 285***).

**Example**

Company A (possibly a bank) buys an asset for €1m and leases it to company X, a loss-maker. An accelerated capital allowance of €1m is then claimed by company A against the tax on its other profits (if it can establish that the rental is trading income). In the following accounting period the asset subject to the leasing contract is transferred to company B, a subsidiary of company A set up for the purpose, without a balancing charge falling due in respect of the sale of the asset because of the relationship between the 2 companies. Under prior arrangement company X purchases from company A the shares of company B at a price which reflects the benefit of the tax relief given to company A in respect of the asset. In this way company X through its group relationship with company B acquires ownership of the asset and a substantial share of the cash value of the tax relief obtained by company A in respect of the asset. In addition, company B can obtain group relief in respect of company X's losses.

The section deals with an abuse such as is set out in the example by providing that a loss (created by capital allowances) in respect of the leasing contract can be allowed only by carry-forward against subsequent profits (if any) arising under the contract.

### Details

Where a company buys plant and machinery which it lets to another person by a leasing contract entered into after 27 November, 1975 and the company could claim relief in respect of a loss incurred in the leasing contract, and if in the accounting period for which an initial or free depreciation allowance in respect of plant and machinery was given to the company the arrangements specified in ***paragraph (c)*** existed, then the company is entitled to claim relief on the capital allowances against the leasing contract profits only. ***(1)***

The arrangements (which may be of any kind, whether in writing or not) specified are those which provide for a successor company to carry on the trade or any part of the trade of the company which consists of or includes the obligations of the (lessor) company under the leasing contract. ***(2)***

A successor is —

- one within the meaning of successor as used in ***section 400*** (company reconstruction without ownership change), or
- where the 2 companies are connected with one another (see ***section 10***).

Profits or losses arising from the leasing are to be computed on the basis that a separate trade commenced at the commencement of the letting. ***(3)***

In determining whether the lessor company is entitled to claim relief under ***section 396(1)*** or ***(2)*** for a loss arising from a leasing contract, the loss is to be treated as incurred in a separate trade. ***(4)***

## 426 Partnerships involving companies: effect of arrangements for transitional relief

### Summary

This section aims at preventing abuses in partnerships involving companies in the matter of group relief. The section is designed to ensure that relief for losses, etc can only be allowed in respect of a company's share in a partnership profit or loss where the share really accrues to or is borne by the partner company. Where artificial arrangements exist, for example, where one partner pays another for its right to claim tax allowances or receives compensation for meeting actual losses, relief for losses in a partnership trade is to be confined within the partnership and is not available for relief against other profits of a partner which is a company.

### Details

The company's share of profits or loss is the amount net of capital allowances, etc (that is, it is the amount chargeable or allowable for corporation tax and is the equivalent of the company's profits or loss in the several trade). ***(1)***

The section applies to a company in a partnership carrying on a partnership trade if arrangements exist so that — ***(2)***

- in respect of the company's share of profit or loss of any accounting period of the partnership, another member of the partnership or a person connected with that member receives any payment or rights in money's worth, or

- in respect of the company's share of loss of any accounting period of the partnership, the partner company or a person connected with it receives any payment or rights in money's worth (other than a group relief payment to the partner company by another company which is a member company of the same group as the partner company).

Where the section applies, the following restrictions operate to keep within the *(3)* "partnership net" the partnership profits or losses of an accounting period in relation to which artificial arrangements exist. Where there are such arrangements, the partner company is not able to use its share of the partnership profits or losses to reduce or satisfy the tax properly due on profits arising outside the partnership. In addition, the company cannot use tax relief from a non-partnership source to reduce tax payable on partnership profits.

Where the partnership profits arise from a source assessable under Case IV or Case V of *(4)* Schedule D, the company's share is to be treated as if it arose from the exercise of a trade and any allowance to be made were an allowance to be made in taxing the profits of a trade.

**Examples**

The following examples show the type of transaction that could occur if this section was not in force. In all 3 of the following examples, Mr. X who has been carrying on business as a sole trader takes a company Y Ltd into partnership. Y Ltd does not put any capital into the business. Under the terms of the partnership deed, profits and losses are to be shared equally. Y Ltd pays corporation tax at the higher rate (see ***section 21A***).

Separate arrangements may be made which in effect vary these terms.

For example

1. If Y Ltd is a loss-maker and Mr. X is liable to income tax at 41 per cent it may be arranged that Y Ltd will pay to Mr. X 60 per cent of the half-share of the profits of the partnership to which it becomes entitled, or

2. If Y Ltd is a profit-maker, the partnership is a loss-maker and Mr. X is not a higher-rate taxpayer, it may be arranged that Mr. X will pay to Y Ltd 75 per cent of the half-share of the loss which Y Ltd takes over, or

3. If Y Ltd and the partnership are both profit-makers but the partnership profit is more than offset by capital allowances to which the partnership is entitled and Mr. X is not a higher-rate taxpayer, it may be arranged that Y Ltd will pay to Mr. X 99 per cent of its half-share of the profits and of the relief it gets by setting off against its other income the notional loss created by deducting the capital allowances from the partnership profit.

In each case, both Mr. X and Y Ltd will gain at the expense of the Revenue, the gain being the result of switching profits from a higher to a lower rate of tax. This is illustrated by the following 3 examples.

**Example 1**

| | |
|---|---|
| Partnership profits | €20,000 |
| Y Ltd's half-share | €10,000 |

Y Ltd sets off part of its own loss (unconnected with the partnership) against this €10,000 so that it does not have to pay corporation tax on it.

Y Ltd pays to Mr. X 60 per cent of €10,000 = €6,000. Y Ltd thus ends up with €10,000 – €6,000 = €4,000 which is €1,500 more than the corporation tax value (€10,000 @ 25% = €2,500) of the €10,000 loss which it could otherwise have carried forward for set-off against future profits.

| | |
|---|---|
| Mr. X gets from Y Ltd | €6,000 |
| and avoids income tax at 41 per cent on €10,000 | €4,200 |
| | €10,200 |
| less the half-share of profits given over to Y Ltd | €10,000 |

| | | |
|---|---|---|
| Mr. X thus also gains | | €200 |

The total gain, €1,500 + €200 = €1,700, is the result of switching profits of €10,000 from Mr. X's income tax rate of 41 per cent to Y Ltd's corporation tax rate of 25 per cent (that is, €10,000 @ 17%).

**Example 2**

| | | |
|---|---|---|
| Partnership loss | €20,000 | |
| Y Ltd's half-share | €10,000 | |
| Y Ltd sets off this loss €10,000 against part of its own profits | | |
| Y Ltd saves corporation tax on €10,000 @ 25% = | | €2,500 |
| Y Ltd gets from Mr. X 80 per cent of his half-share of the loss €10,000 = | | |
| | | €8,000 |
| | | €10,500 |
| less half-share of loss taken over | | €10,000 |
| Y Ltd thus gains | | €500 |
| Mr. X saves the amount of the loss taken over by Y Ltd | | €10,000 |
| less income tax relief he might have got on that loss | | |
| €10,000 at 20 per cent = | | €2,000 |
| Amount paid to Y Ltd 80 per cent of €10,000 = | €8,000 | €10,000 |
| Mr. X gains | | €0 |

The total gain €500 is the result of switching of losses €10,000 from Mr. X's income tax rate of 20 per cent to Y Ltd's corporation tax rate of 25 per cent (that is, €10,000 @ 5%).

**Example 3**

| | | |
|---|---|---|
| Partnership profits | €40,000 half-share | €20,000 |
| Capital allowances | €80,000 half-share | €40,000 |
| Notional loss | €40,000 half-share | €20,000 |
| Y Ltd gets half-share of profits | | €20,000 |
| but does not have to pay corporation tax on this and sets off notional loss, €20,000, against its other profits, saving corporation tax €20,000 @ 25 per cent | | €5,000 |
| | | €25,000 |
| less payment to Mr. X 99 per cent of €25,000 = | | €24,750 |
| Y Ltd thus gains | | €250 |
| Mr. X gets from Y Ltd 99 per cent of €25,000 = | | €24,750 |
| less half-share of profit given over to Y Ltd | €20,000 | |

| | | |
|---|---|---|
| less income tax relief he might have got on half-share of notional loss, €20,000, at 20 per cent | €4,000 | €24,000 |
| Mr. X gains | | €750 |

The derivation of the total gain, €750 + €250 = €1000, is more complex in this case, but it is the end result of switching the half-share of capital allowances, €40,000, from Mr. X's income tax rate of 20 per cent to Y Ltd's corporation tax rate of 25 per cent.

## 427 Information as to arrangements for transferring relief, etc

This section empowers the inspector to call for information where he/she has reason to believe that at any time material to a claim for group relief arrangements exist, or have existed —

- for varying an equity holder's entitlement ***(section 417(3)***),
- for switching a company from one group or consortium to another (***section 424(3) or (4)***),
- for a successor company to take over obligations under a leasing contract (***section 425(1)(c)***), or
- for certain payments by or to a company in a partnership (***section 426(2)***).

The inspector is empowered to serve notice on a company, in relation to matters within the scope of this Part, requiring the company to furnish within 30 days a declaration or other information to satisfy the inspector as to the existence or non-existence of arrangements whether in writing or not for the transfer of relief, etc.

The notice may be served on a company surrendering group relief as well as on the company claiming the relief.

The notice may be served on the partners in a partnership.

## 428 Exclusion of double allowances, etc

### Summary

This prevents double relief for a loss, etc. In particular, it ensures that 2 or more claimant companies cannot between them obtain relief for more than the whole loss, etc of the accounting period of the surrendering company.

### Details

Relief is not to be given more than once in respect of the same amount whether by way of group relief or relief under some other head. ***(1)***

Two or more claimant companies cannot between them be given relief for more than the whole loss, etc of the accounting period of the surrendering company. ***(2)***

Group relief is restricted where there is some part of the surrendering company's true accounting period during which it is not in group relationship with any of the claimant companies. The full loss of the surrendering company's accounting period is reduced by the part of the loss attributable to the part of the accounting period during which there is no claimant company in group relationship with the surrendering company. ***(3)***

A claimant company cannot obtain relief for the losses of several surrendering companies for a total amount in excess of its profits as reduced by the amount of the profits attributable to any part of the accounting period when none of the surrendering companies was in group relationship with it. ***(4)***

A consortium claim and a claim other than a consortium claim are not both to be effective as regards the loss, etc of the same accounting period of the same surrendering company unless each claim relates to a loss, etc apportioned under ***section 424(2)(a)*** to a component period of the accounting period and the 2 component periods do not overlap. (This deals with the case where a holding company is interposed between the joint owners and the trading company. Since the trading company is necessarily a subsidiary of the holding company, there are 2 methods of relief, namely, one for the holding company in respect of the trading company's loss (group claim) and the other for the joint owners (consortium claim) for the same loss. These reliefs are to be alternatives and a double claim in respect of the same relief is prevented). Consortium claims are to be disregarded in ***subsections (3)*** or ***(4)***. (The point here is that in a group situation 2 claimant companies may claim a set-off of the same loss of a surrendering company while in a consortium claim each company can claim relief only in respect of its appropriate share of the surrendering company's loss. ***Subsections (3)*** and ***(4)*** apply to set an overall limit when 2 or more claimant companies claim in respect of one loss or one claimant company claims in respect of several losses). ***(5)***

A reference in ***Part 9***, ***Chapter 1*** of ***Part 24, Chapter 1*** of ***Part 29*** and ***section 765*** to a capital allowance made includes a reference to such an allowance which would be made but for the granting of group relief in respect of the allowance or which could have been made but for an insufficiency of profits or other income. ***(6)***

## 429 Claims and adjustments

### Summary

This section provides the machinery for the making of claims for relief under this Chapter and for the making of adjustments where excessive relief has been granted. Group relief may be claimed by several companies each claiming for part of the loss, etc and a company may claim less than the full amount in respect of which it could make a claim.

### Details

A claim for group relief — ***(1)***

- need not be for the full amount of loss, etc available,
- is to require the consent of the surrendering company,
- must be made within 2 years from the end of the surrendering company's accounting period for which the claim is made.

Where the claimant company is a consortium member, each other member of the consortium must notify its consent to the inspector. The consent of the surrendering company is also required. ***(2)***

If the inspector discovers that any group relief given is excessive, he/she may make an assessment to corporation tax under Case IV of Schedule D in the amount which should in his/her opinion be charged. ***(3)***

The procedure under ***subsection (3)*** is without prejudice to ***Chapter 5 of Part 41A***, which deals with, inter alia, the making of amended assessments, or to the making of all such adjustments or discharges as achieve a correct result when group relief has been allowed in an excess amount. ***(4)***