



INCOME TAX ACT 1970

INCOME TAX (LOSS RELIEF) REGULATIONS 1987

In exercise of the power conferred on the Treasury by section 27A of the Income Tax Act 1970, and all other powers enabling it in that behalf, the following Regulations are hereby made:-

Citation, commencement, application and transitional

1. (1) These regulations may be cited as the Income Tax (Loss Relief) Regulations 1987 and, subject to section 27A(4) of the Income Tax Act 1970, shall be deemed to have come into operation on the 6th April 1987.

(2) Except as provided in the following paragraph, relief may not be claimed under these regulations -

(a) In respect of losses sustained before the 6th April 1987, or

(b) against income assessable in any year of assessment ending before that date.

(3) So much of any loss incurred before the 6th April 1987 as could have been carried forward to the year commencing on that date under section 28 of the Income Tax Act 1970 (if that section were still in operation) may be claimed for and carried forward under regulation 8 as if it was a loss in respect of which relief has not been wholly given under regulation 3.

(4) No relief may be claimed under these regulations if relief in respect of that loss has already been given under section 28 of the Income Tax Act 1970 or otherwise.

Interpretation

2. In these regulations any reference to "the Capital Allowances Act" shall be construed as a reference to the Capital Allowances Act 1968, an Act of Parliament, and any Act of Parliament amending or replacing that Act, as it or they have effect for the purposes of section 29 of the Income Tax Act 1970.

Set-off against general income.

3. (1) Where, in any year of assessment, a person sustains a loss in any trade, profession or vocation carried on by him either solely or in partnership, he may make a claim for relief from income tax equal to the amount of that loss on the amount of his income received or accrued in the year of loss and assessable in the year of assessment next following that year.

(2) A person may by notice in writing, given within 2 years after a year of assessment in which such a loss has been sustained, make a claim for relief from income tax on an amount of his income equal to the amount of the loss.

(3) Relief may only be claimed under paragraph (2) to the extent that relief in respect of that loss has not already been given under paragraph (1).

(4) Where the total income of an association is less than the amount distributed as dividend in any year, the difference may be claimed under this regulation and carried forward under regulation 8 as a loss sustained in the trade of that association.

Provisions supplementary to regulation 3

4. (1) A claim for relief under regulation 3 may require that the relief be given only by reference to the income of the person sustaining the loss, without extending to the income of that person's wife or husband.

(2) Subject to any requirement under paragraph (1), relief under regulation 3 shall be given in respect of a loss sustained by any person by treating the loss as reducing first his income of the corresponding class, then his other income, then the income of the corresponding class of that person's wife or husband, then the wife or husband's other income.

(3) For the purposes of paragraph (2), "income of the corresponding class" means earned or unearned income according as income arising during the same period as the loss to the person sustaining it from profits or gains of the same trade, profession or vocation would have been that person's earned or unearned income.

(4) Where relief under regulation 3 has been given to a person for any year of assessment, he shall not be entitled, in computing the amount of the assessment for any subsequent year, to a deduction of any portion of the amount in respect of which such relief has been obtained.

(5) For the purposes of this regulation, the amount of a loss sustained in a trade shall be computed in like manner as the profits or gains arising or accruing from the trade are computed for the purposes of the Income Tax Acts.

Extension of right of set-off to capital allowances

5. (1) Subject to the provisions of this regulation, any claim made under regulation 3 for relief in respect of a loss sustained by the claimant in any trade in any year of assessment (hereafter referred to as "the year of loss") may require the amount of that loss to be determined as if an amount equal to the capital allowances for the year of assessment for which the year of loss is the basis year were to be deducted in computing the profits or gains or losses of the trade in the year of loss; and a claim may be so made notwithstanding that, apart from those allowances, the claimant has not sustained a loss in the trade in the year of the loss.

(2) Capital allowances for any year of assessment shall be taken into account by virtue of this regulation only if and so far as they are not required to offset balancing charges for the year; and, for the purposes of this paragraph, the capital allowances for a year of assessment shall be treated as required to offset balancing charges for the year up to the amount on which the balancing charges fall to be made after deducting from that amount the amount (if any) of capital allowances for earlier years which is carried forward to that year and would, without the balancing charges, be non-effective in that year.

(3) Where the capital allowances taken into account by virtue of this regulation are those for the year of assessment for which the claim is made or for the preceding year (the year of loss being the basis year for that year itself, or the claim being made by way of carry-forward of the loss by virtue of regulation 3(1)),

relief shall not be given by reference to those allowances in respect of an amount greater than the amount non-effective in the year for which the claim is made, or, in the case of allowances for the preceding year, the amount non-effective in both years.

(4) For the purposes of this regulation -

- (a) where the end of the basis period for a year of assessment (as defined in section 72 of the Capital Allowances Act) falls in, or coincides with the end of, any year of assessment, that year is the basis year for the first-mentioned year of assessment, but so that, if a year of assessment would under the foregoing provision be the basis year both for that year itself and for another year of assessment, it shall be the basis year for the year itself and not for the other year,
- (b) any reference to the capital allowances or balancing charges for a year of assessment shall be construed as a reference to those falling to be made in taxing the trade for that year (but not including, in the case of allowances, any part of the allowances for an earlier year carried forward under section 70(4) of the Capital Allowances Act),
- (c) any reference to an amount of capital allowances non-effective in a year shall be construed as referring to the amount to which, by reason of an insufficiency of profits or gains, effect cannot be given in taxing the trade for the year, and

(d) effect shall be deemed to be given in taxing the trade to allowances carried forward from an earlier year before it is given to allowances arising in a later year.

(5) Where, on a claim made by virtue of this section, relief is not given under regulation 3 for the full amount of the loss determined as mentioned in paragraph (1), the relief shall be referred as far as may be to the loss sustained by the claimant in the trade rather than to the capital allowances in respect of the trade.

(6) Where for any year of assessment relief is given under regulation 3 by reference to any capital allowances, then, for all the purposes of the Income Tax Acts, effect shall be deemed to have been given to those allowances up to the amount in respect of which relief is so given, as if (in accordance with section 70(2) of the Capital Allowances Act) a deduction in respect thereof had been allowed in taxing the trade for that year, or, in the case of allowances for the following year, in taxing the trade for that following year; and any relief previously given for a subsequent year on the basis that effect had not been given to the allowances as aforesaid shall be adjusted where necessary by an assessment.

(7) Relief from tax may be given by virtue of this regulation by reference to capital allowances for a year of assessment before the passing of any Act granting income tax for that year, as if income tax had been granted for the year without alteration; but if relief given to a person by virtue of this section for any year of assessment is affected by a subsequent alteration of the law, or by any discontinuance of the trade or other event occurring

after the end of the year, any necessary adjustment may be made, and so much of any repayment of tax as exceeded the amount repayable in the events that happened may, if not otherwise made good, be assessed under the Income Tax Acts and recovered from that person accordingly.

(8) Relief from tax shall not be given by virtue of this regulation by reference to capital allowances granted in respect of capital expenditure incurred on the provision of machinery or plant for leasing by an association in the course of a trade.

(9) This regulation applies (with any necessary adaptations) in relation to a profession or vocation, the profits or gains of which are assessable under the Income Tax Acts, as it applies in relation to a trade.

Restrictions on right of set-off

6. (1) Subject to paragraph (2), a loss (including any amount in respect of capital allowances which, by virtue of regulation 5, is to be treated as a loss) shall not be available for relief under regulation 3 unless it is shown that, for the year of assessment in which the loss is claimed to have been sustained, the trade was being carried on on a commercial basis and with a view to the realisation of profits in the trade or, where the carrying on of the trade formed part of a larger undertaking, in the undertaking as a whole.

(2) Paragraph (1) shall not apply to a loss made, or an allowance in respect of expenditure incurred, by any person in the exercise of functions conferred by or under any statutory provision.

(3) Where during a year of assessment there is a change in the manner in which a trade is being carried on, it shall be treated for the purposes of this regulation as having been carried on throughout the year in the way in which it was being carried on by the end of the year.

(4) Subject to paragraph (5), where a trade is (or falls to be treated as being) carried on for a part only of a year of assessment by reason of its being (or falling to be treated as being) set up and commenced or discontinued, or both, in that year, paragraphs (1) to (3) shall have effect in relation to the trade as regards that part of that year as if any reference to the manner of carrying on the trade for or by the end of that year were a reference to the manner of carrying it on for or by the end of the said part thereof.

(5) For the purposes of this regulation, the fact that a trade was being carried on at any time so as to afford a reasonable expectation of profit shall be conclusive evidence that it was then being carried on with a view to the realisation of profits.

(6) This regulation -

(a) applies to professions and vocations as it applies to trades, with references to a commercial basis construed accordingly, and

(b) has effect without prejudice to regulation 10.

Leasing by Individuals

7. (1) There shall be disregarded for the purposes of regulation 5 any allowances made to an individual in respect of expenditure incurred on the provision of machinery or plant for leasing in the course of a trade unless -

(a) the trade is carried on by him for a continuous period of at least six months in, or beginning or ending in, the year of loss as defined in that regulation; and

(b) he devotes substantially the whole of his time to carrying it on throughout that year or if it is set up or permanently discontinued (or both) in that year, for a continuous period of at least six months beginning or ending in that year.

(2) Paragraph (1) shall apply also to expenditure incurred by an individual on the provision for the purposes of a trade carried on by him of an asset which is not to be leased if payments in the nature of royalties or licence fees are to accrue from rights granted by him in connection with that asset.

(3) Where relief has been given in a case to which this section applies it shall be withdrawn by the making of an assessment.

(4) References in this section to the carrying on of a trade by an individual are to his carrying it on either alone or in partnership.

Carry forward against subsequent profits

8. (1) Where a person has, in any trade, profession or vocation carried on by him either solely or in partnership, sustained a loss in respect of which relief has not been wholly given either under regulation 3 or under any provision of the Income Tax Acts, he may make a claim requiring that any portion of the loss for which relief has not been so given shall be carried forward and, as far as may be, deducted from or set off against the amount of profits or gains on which he is assessed to income tax in respect of that trade, profession or vocation for subsequent years of assessment.

(2) In the application of this regulation to a loss sustained by a partner in a partnership, "the amount of profits or gains on which he is assessed" shall, in respect of any year, be taken to mean such portion of the profits of the partnership derived from the trade, profession or vocation as he would be required under section 63 of the Income Tax Act 1970 to include in a return of his total income for that year.

(3) Any relief under this regulation shall be given as far as possible from the first subsequent assessment, and, so far as it cannot be so given, then from the next assessment, and so on.

(4) In so far as relief in respect of any loss has been given to any person under this regulation, that person shall not be entitled to claim relief in respect of that loss under any other provision of the Income Tax Acts.

(5) Any claim under this regulation concerning the amount of any loss must be made within six years after the year of

assessment in question; but the question whether any and, if so, how much relief on that amount should be given under this regulation against tax for any year of assessment may be the subject of a separate claim made not later than six years after that year of assessment.

Carry back of terminal losses

9. (1) Subject to paragraph (2), where a trade, profession or vocation is permanently discontinued, and any person then carrying it on, either solely or in partnership, has sustained therein a loss to which this section applies (hereafter referred to as a "terminal loss"), that person may, subject to the provisions of this section, make a claim requiring that the amount of the terminal loss shall, as far as may be, be deducted from or set off against the amount of profits or gains on which he has been charged to income tax in respect of the trade, profession or vocation for the three years of assessment last preceding that in which the discontinuance occurs; and there shall be made all such reductions of assessments or repayments of tax as may be necessary to give effect to the claim:

(2) Relief shall not be given in respect of the same matter both under this regulation and under any provision of these regulations or of the Income Tax Acts.

(3) Any relief under this section shall be given as far as possible from the assessment for a later rather than an earlier year.

(4) The question whether a person has sustained any and, if so, what terminal loss in a trade, profession or vocation shall be determined for the purposes of this section by taking the amounts (if any) of the following, in so far as they have not otherwise been taken into account so as to reduce or relieve any charge to tax -

- (a) the loss sustained by him in the trade, profession or vocation in the year of assessment in which it is permanently discontinued,
- (b) the relevant capital allowances for that year of assessment,
- (c) the loss sustained by him in the trade, profession or vocation in the part of the preceding year of assessment beginning twelve months before the date of the discontinuance, and
- (d) the same fraction of the relevant capital allowances for that preceding year of assessment as the part thereof beginning twelve months before the discontinuance is of a year.

(5) In paragraph (4) "the relevant capital allowances" means, in relation to any year of assessment, any capital allowances falling to be made in taxing the trade, profession or vocation for that year, excluding amounts carried forward from an earlier year; and, for the purposes of paragraphs (a) and (c) of that paragraph, the amount of a loss shall, subject to the provisions of this regulation, be computed in the same way as profits or gains for the purposes of the Income Tax Acts.

(6) Where, on the permanent discontinuance of a trade which consists of or includes the working of a mine, oil well or other source of mineral deposits within the meaning of Chapter III of Part I of the Capital Allowances Act, a claim for relief is made both under this regulation and under section 15(1) of that Act (carry-back of balancing allowances), the balancing allowance in respect of which the claim is made under the said section 15(1)

shall be left out of account for the purposes of paragraph (4), but relief under this regulation shall be given in priority to relief under the said section 15(1).

(7) Subject to paragraph (8), a claim for relief under this regulation may require that, in so far as they have not been otherwise taken into account so as to reduce or relieve any charge to tax, capital allowances in respect of the trade, profession or vocation under Part I of the Capital Allowances Act, being allowances which fall to be made to the claimant by way of discharge or repayment of tax, and to be so made for the year of assessment in which the discontinuance occurs or the preceding year of assessment, shall be added to the terminal loss sustained by him (or, if he has not sustained a terminal loss computed in accordance with the provisions of this section, shall be treated as a terminal loss so sustained) and the allowances to be taken into account for this purpose may include allowances arising before a previous discontinuance:

(8) For the purposes of paragraph (7) -

- (a) there shall be taken into account such fraction only of the allowances for the said preceding year of assessment as the part of that year beginning twelve months before the discontinuance giving rise to the claim is of a year, and
- (b) the allowances for any year shall not be treated as including any amounts carried forward from an earlier year.

Restriction of relief in case of farming and market gardening

10. (1) Any loss incurred in a trade of farming or market gardening shall be excluded from regulation 3 if in each of the prior five years a loss was incurred in carrying on that trade; and where a loss is so excluded any related capital allowance shall also be excluded from that regulation.

(2) Paragraph (1) shall not restrict relief for any loss or for any capital allowance, if it is shown by the claimant that the whole of his farming or market gardening activities in the year next following the prior five years are of such a nature, and carried on in such a way, as would have justified a reasonable expectation of the realisation of profits in the future if they had been undertaken by a competent farmer or market gardener, but that, if that farmer or market gardener had undertaken those activities at the beginning of the prior period of loss, he could not reasonably have expected the activities to become profitable until after the end of the year next following the prior period of loss.

(3) Paragraph (1) shall not restrict relief where the carrying on of the trade forms part of, and is ancillary to, a larger trading undertaking.

(4) In this regulation -

“basis year”, in relation to any capital allowance, shall be construed in accordance with regulation 5(4)(a);

“farming” means the occupation or working of land wholly or mainly for the purposes of husbandry excluding

market gardening;

"market gardening" means the occupation or working of land as a nursery or garden for the sale of the produce;

"prior five years" in relation to a loss incurred in a year of assessment, means the last five years of assessment before that year;

"prior period of loss" means the prior five years, except that, if losses were incurred in the trade in successive years of assessment amounting in all to a period longer than five years (and ending when the prior five years end), it means that longer period;

(5) For the purposes of this regulation, a capital allowance is related to a loss incurred in a trade if it falls to be made in taxing that trade and its basis year is the year of assessment in which the loss was incurred.

(6) Paragraph (1) shall not restrict relief for any loss or capital allowance if the trade was set up and commenced within the prior five years.

(7) A trade shall not be treated as discontinued if, for the purposes of the Capital Allowances Act it is not to be treated as discontinued for the purpose of capital allowances.

(8) Where at any time there has been a change in the persons engaged in carrying on a trade, this regulation shall, notwithstanding paragraphs (6) and (7) apply to any person who was engaged in carrying on the trade immediately before and immediately after the change as if the trade were the same before and after without any discontinuance, and as if -

- (a) a husband and his wife were the same person, and
- (b) a husband or his wife were the same person as any company of which either the husband or the wife has control, or of which the two of them have control.

(9) For the purposes of paragraph (8), a person shall be taken to have control of a company if he exercises, or is able to exercise or is entitled to acquire, control, whether direct or indirect, over the company's affairs.

(10) Where two or more persons together satisfy any of the conditions of paragraph (9), they shall be taken to have control of the company.

(11) For the purposes of paragraph (9) a person shall be treated as entitled to acquire anything which he is entitled to acquire at a future date, or will at a future date be entitled to acquire.

(12) For the purposes of paragraph (9), there shall be attributed to any person any rights or powers of a nominee for him, that is to say, any rights or powers which another person possesses on his behalf or may be required to exercise on his direction or behalf.

Further relief for losses in early years of trade

11. (1) Where an individual carrying on a trade sustains a loss in the trade in -

(a) the year of assessment in which it is first carried on by him; or

(b) any of the next three years of assessment,

he may, by notice in writing given within two years after the year of assessment in which the loss is sustained, make a claim for relief under this regulation.

(2) Subject to the provisions of this regulation, relief shall be given from income tax on an amount of the claimant's income equal to the amount of the loss, being income for the three years of assessment last preceding that in which the loss is sustained, taking income for an earlier year before income for a later year.

(3) Relief shall not be given for the same loss or the same portion of a loss both under this section and under any other provision of these regulations or the Income Tax Acts.

(4) Relief shall not be given under this regulation in respect of a loss sustained in any period unless it is shown that the trade was carried on throughout that period on a commercial basis and in such a way that profits in the trade (or, where the carrying on of the trade forms part of a larger undertaking, in the undertaking as a whole) could reasonably be expected to be realised in that period or within a reasonable time thereafter.

(5) Relief shall not be given under this regulation in respect of a loss sustained by an individual in a trade if -

- (a) at the time when it is first carried on by him he is married to and living with another individual who has previously carried on the trade; and
- (b) the loss is sustained in a year of assessment later than the third year of assessment after that in which the trade was first carried on by the other individual.

(6) Subject to paragraphs (7) and (8), regulations 4 and 5 (other than paragraph (8)) (which contain ancillary provisions relating to relief under regulation 3) shall have effect as if references to regulation 3 included references to this regulation.

(7) In its application by virtue of paragraph (6), regulation 5 shall have effect with the following modifications -

- (a) in paragraph (3) for the words from "are those for the year of assessment" onwards there shall be substituted the words "are those for the year of loss, relief shall not be given by reference to those allowances in respect of an amount greater than the amount non-effective in that year";
- (b) In paragraph (6) for the words "In the case of allowances for the following year, in taxing the trade for that following year" there shall be substituted the words "In the case of allowances for any later year, in taxing the trade for that later year".

(8) This regulation applies, with the necessary modifications, in relation to a profession or vocation as it applies in relation to a trade.

Dealings in commodity futures: withdrawal of loss relief

12. (1) Relief shall not be given to any person under regulation 3 or 11 in respect of a loss sustained in a trade of dealing in commodity futures if -

- (a) the loss was sustained in a trade carried on in partnership and that person or one or more of the other partners was a company; and
- (b) a scheme has been effected or arrangements have been made (whether by the partnership agreement or otherwise) such that the sole or main benefit that might be expected to accrue to that person from his interest in the partnership was the obtaining of a reduction in tax liability by means of such relief as aforesaid.

(2) Where relief has been given in a case to which this regulation applies it shall be withdrawn by the making of an assessment.

Relief for pre-trading expenditure

13. (1) Where an individual incurs expenditure for the purposes of a trade before the time when he begins to carry it on and the expenditure -

(a) is incurred not more than 3 years before that time;

and

(b) is not allowable as a deduction in computing his profits or gains from the trade but would have been so allowable if incurred after that time,

the expenditure shall be treated for the purposes of income tax as incurred on the day on which the trade is first carried on by him and for the purposes of relief under these regulations as if it were the amount of a loss sustained by him in the trade in the year of assessment in which it is set up and commenced.

(2) A claim for relief under these regulations in respect of an amount treated as a loss by virtue of paragraph (1) shall be made separately from any claim for relief under these regulations in respect of any other loss.

(3) This regulation applies in relation to a profession or vocation as it applies to a trade.

Made under the Common Seal of the Treasury this 30th day of
September, 1987.


David Cameron
Minister

Thomas G. L.
Administrator

EXPLANATORY NOTE
(This note is not part of the Regulations)

Representations were made to the Treasury by the financial sector to have the loss relief provisions of Section 28 of the Income Tax Act 1970 improved to the level of the loss relief provisions of the United Kingdom legislation. Therefore Section 28 was repealed and a replacement Section 27A was inserted into the 1970 Act by Section 4 of the Income Tax (Amendment) Act 1986.

These regulations provide relief for trading losses, equivalent to the United Kingdom relief.