

Income tax: restriction of relief, for losses in farming or market gardening. FA74 s27(1) to (6); FA75 s33(2) and Sch1 ptII; FA96 s132(2) and Sch5 PtII 662.—(1) In this section—

“prior 3 years”, in relation to a loss incurred in a year of assessment, means the last 3 years of assessment before that year;

“prior period of loss” means the prior 3 years or, if losses were incurred in successive years of assessment amounting in the aggregate to a period longer than 3 years (and ending when the prior 3 years end), that longer period.

(2) (a) Any loss is to be treated as a loss incurred in a trade of farming or market gardening shall not be available for relief under section 381 unless it is shown that, for the year of assessment in which the loss is claimed to have been incurred, the trade was being carried on on a commercial basis and with a view to the realisation of profits in the trade.

(b) Without prejudice to paragraph (a), any loss is to be treated as a loss incurred in any year of assessment in a trade of farming or market gardening shall not be available for relief under section 381 if in each of the prior 3 years a loss was incurred in carrying on that trade.

(c) For the purposes of this section, the fact that a trade of farming or market gardening 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.

(d) This subsection shall not restrict relief for any loss or any capital allowance where it is shown by the claimant—

(i) that the whole of the claimant's farming or market gardening activities in the year following the prior 3 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 those activities had been undertaken by a competent farmer or market gardener, and

(ii) that if such farmer or market gardener had undertaken those activities at the beginning of the prior period of loss, such farmer or market gardener could not reasonably have expected those activities to become profitable until after the end of the year following the prior period of loss.

(e) This subsection shall not restrict relief where the carrying on of the trade forms part of and is ancillary to a larger trading undertaking.

(3) In ascertaining for the purposes of this section whether a loss was incurred in any year, the rules applicable to Case I of Schedule D shall be applied.

(4) Where a trade of farming or market gardening is or is to be treated as being carried on for a part only of a year of assessment by reason of its being set up and commenced, or discontinued, or both, in that

year, subsection (2) shall apply in relation to that trade as regards that part of that year.

(5) subsection (2) shall not restrict relief for any loss or capital allowance if the trade was set up and commenced within the prior 3 years, and for the purposes of this subsection a trade shall be treated as discontinued and a new trade set up in any event which under the Income Tax Acts is to be treated as equivalent to the permanent discontinuance or setting up of a trade.

(6) Notwithstanding subsection (5), where at any time there has been a change in the persons engaged in carrying on a trade of farming or market gardening, this section shall 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 the change without any discontinuance and as if a person and another person with whom such person is connected were the same person.