

PART 12 Principal Provisions Relating to Loss Relief, Treatment of Certain Losses and Capital Allowances,
and Group Relief

CHAPTER 1 Income tax: loss relief

Right to repayment of tax by reference to losses. ITA67 s307(1), (1AAA) and (2) to (6); F(MP)A68 s3(2) and Sch Ptl; FA74 s26; FA79 s17; FA80 s19 and Sch1 PtIII; FA97 s146(2) and Sch9 PtII 381.—(1) Subject to this section, where in any year of assessment any person has sustained a loss in any trade, profession or employment carried on by that person either solely or in partnership, that person shall be entitled, on making a claim in that behalf, to such repayment of income tax as is necessary to secure that the aggregate amount of income tax for the year ultimately borne by that person will not exceed the amount which would have been borne by that person if the income of that person had been reduced by the amount of the loss.

(2) This section shall not apply to any loss sustained in any year of assessment by the owner of a stallion from the sale of services of mares by the stallion or of rights to such services or by the part-owner of a stallion from the sale of such services or such rights.

(3) (a) In this subsection, “appropriate income” means either earned or unearned income according as income arising during the same period as the loss to the person sustaining the loss from the same activity would have been that person's earned or unearned income.

(b) For the purposes of subsection (1), the amount of income tax which would have been borne if income had been reduced by the amount of a loss shall be computed—

(i) where the loss has been sustained by an individual, on the basis of treating the loss as reducing—

(I) firstly, the appropriate income of the individual,

(II) secondly, the other income of the individual,

(III) thirdly, in a case where the individual, or, being a husband or wife, as the case may be, the individual's spouse, is assessed to tax in accordance with section 1017, the appropriate income of the individual's wife or husband, as the case may be, and

(IV) finally, the other income of the individual's wife or husband, as the case may be, and

(ii) where the loss has been sustained in a trade carried on by a body corporate, on the basis of treating the loss as reducing—

(I) firstly, the income of the body corporate from profits or gains of the trade in which the loss was sustained, and

(II) then, the other income of the body corporate.

(4) The amount of a loss sustained in an activity shall for the purposes of this section be computed in the like manner as profits or gains arising or accruing from the activity would be computed under the relevant provisions of the Income Tax Acts.

(5) Where repayment has been made to a person for any year under this section—

(a) no portion of the loss which in the computation of the repayment was treated as reducing the person's income shall be taken into account in computing the amount of an assessment for any subsequent year, and

(b) so much of the loss as was required by subsection (3) to be treated as reducing income of a particular class or income from a particular source shall for the purposes of the Income Tax Acts be regarded as a deduction to be made from income of that class or from income from that source, as the case may be, in computing the person's total income for the year.

(6) Any claim to repayment under this section shall be made, in a form prescribed by the Revenue Commissioners, not later than 2 years after the end of the year of assessment and shall be made to and determined by the inspector; but any person aggrieved by any determination of the inspector on any such claim may, on giving notice in writing to the inspector within 21 days after notification to that person of the determination, appeal to the Appeal Commissioners.

(7) The Appeal Commissioners shall hear and determine an appeal to them under subsection (6) as if it were an appeal to them against an assessment to income tax, and the provisions of the Income Tax Acts relating to the rehearing of an appeal and to the statement of a case for the opinion of the High Court on a point of law shall, with the necessary modifications, apply accordingly.