

Corporation tax: restriction of relief for losses in farming or market gardening. CTA76 s17 663.—(1) In this section—

“prior 3 years”, in relation to a loss incurred in an accounting period, means the last 3 years before the beginning of the accounting period.

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

(2) (a) Any loss incurred in a trade of farming or market gardening shall not be available for relief under section 396 (2) unless it is shown that, for the accounting period 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) (i) In this paragraph, “loss computed without regard to capital allowances” means a loss ascertained in accordance with the rules of Case I of Schedule D but so that, notwithstanding sections 307 and 308, no account shall be taken of any allowance or charge which otherwise would be taken into account under those sections.

(ii) Without prejudice to paragraph (a), any loss incurred in any accounting period in a trade of farming or market gardening shall not be available for relief under section 396 (2) if a loss computed without regard to capital allowances was incurred in carrying on that trade in that accounting period and in each of the accounting periods wholly or partly comprised in the prior 3 years.

(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 where it is shown by the claimant company—

(i) that the whole of its 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) subsection (2) shall not restrict relief for any loss 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 Tax Acts is to be treated as equivalent to the permanent discontinuance or setting up of a trade; but a trade shall not be treated as discontinued if under section 400 (6) it is not to be treated as discontinued for the purpose of capital allowances and charges.

(4) Where a trade of farming or market gardening is or is to be treated as being carried on for a part only of an accounting period by reason of its being set up and commenced, or discontinued, or both, in that accounting period, subsection (2) shall apply in relation to that trade as regards that part of that accounting period.

(5) Notwithstanding subsection (3), 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, and accordingly relief from corporation tax may be restricted under this section by reference to losses some of which are incurred in years of assessment and some, computed without regard to capital allowances, are incurred in a company's accounting periods.