Clause 2: Losses: counteraction of avoidance arrangements

Summary

1. This measure is part of the legislation that reforms how relief for carried-forward losses is given. It puts in place an anti-avoidance rule to counteract arrangements that exploit or circumvent the new legislation to obtain more loss relief than is intended by the new legislation.

Details of the clause

2. Subsection (1) provides that a "loss-related tax advantage" (see subsections (7) and (8)) that arises from "relevant tax arrangements" (see subsections (3) to (5)) is to be counteracted.

3. Subsection (2) sets out how counteraction adjustments may be made.

4. Subsection (3) introduces the term "relevant tax arrangements". Conditions A and B must be met in order for an arrangement to be a "relevant tax arrangement".

5. Subsection (4) sets out Condition A, which is that the arrangements give rise to a "loss-related tax advantage", defined in subsection (7).

6. Subsection (5) sets out Condition B. This considers the effect of the arrangements, in particular whether they achieve more relief than is intended by the loss relief legislation. This could involve, for example, obtaining relief against more than the limit on profits set out in the new Part 7ZA of CTA 2010, or obtaining the benefit of more than the amount of annual allowance set out in the legislation.

7. Subsection (6) supplements subsection (5) by setting out that all relevant circumstances must be taken into account. It gives examples of what those circumstances might involve, but these are not exhaustive.

8. Subsection (7) sets out that a "loss-related tax advantage" is a tax advantage that arises from a deduction under a provision set out in subsection (8).

9. Subsection (8) sets out the loss relief provisions that are to be considered in determining whether there is a "loss-related tax advantage".

10. Subsection (9) provides definitions of "arrangements" and "tax advantage".

11. Subsection (10) provides the commencement rule. This section has effect in relation to a tax advantage that relates to an accounting period beginning on or after 1 April 2017 regardless of when the arrangements in question were made.

12. Subsection (11) covers a situation where a company has an accounting period beginning before and ending on or after 1 April 2017 ("the straddling period"). The

periods before and after 1 April 2017 are treated as separate accounting periods and profits and losses apportioned accordingly.

13. <u>Subsection (12)</u> sets out that where the provision under which a tax advantage was obtained is section 463H of CTA 2009, section 62(3), 303B, 303C or 303D of CTA 2010, or section 124A or 124C of the Finance Act 2012, subsections (10) and (11) have effect as if the references to 1 April 2017 were to 13 July 2017.

Background note

14. This measure is part of a wider reform of the loss relief legislation.

15. The measure will modernise how corporation tax loss relief is given by increasing companies' flexibility in the use of their losses, whilst ensuring that companies pay tax in each accounting period that they make substantial profits.

16. Currently losses can be set against the company's profits of the period in which the loss arose, or surrendered as group relief in the same period, with a fairly wide degree of flexibility. However, losses carried forward to a later period are more restricted. In particular, trading losses can only be set against later profits of the same trade and non-trading deficits on loan relationships can only be set against non-trading profits. Carried-forward amounts cannot be surrendered as group relief.

17. These reforms make two main changes. Firstly, they increase the company's flexibility to set off carried-forward losses, either against the company's own total profits in later periods, or in the form of group relief in a later period. Secondly, they limit the amount of profit against which carried-forward losses can be set to a maximum of 50% of the company's total profits for the period. Each group (or a company that is not part of a group) will have an annual allowance of £5m profits. Carried-forward losses can be set against that amount without restriction. The 50% restriction applies to profits above the £5m annual allowance.

18. No changes are made to relief for in-year losses or in-year group relief, and to losses carried-back to an earlier period: they can still be set off against all available profits of the same period. There is also no change to the treatment of allowable losses under the chargeable gains legislation.

19. The rules will apply to losses arising in the form of trading losses, expenses of management, non-trading loan relationship deficits, UK property business losses and non-trading losses on intangible fixed assets.

20. Existing anti-avoidance rules covering loss buying, deduction buying and 'loss refresh' will be amended to reflect the changes set out above. Additional anti-avoidance rules, including this clause, are being introduced to prevent exploitation and abuse of the new flexibility.

21. The new rules will apply to all losses arising on or after 1 April 2017. Losses arising before that date will remain subject to the existing rules and cannot benefit from the increased flexibility; but they will be subject to the restriction on the amount of profit that can be relieved by carried-forward losses.

22. Since the introduction of the legislation in March 2017, this clause has been amended to apply to basic life assurance and general annuity business (BLAGAB) losses and to oil and gas losses, and the reference to property losses has been amended so that it applies to in-year losses as well as those that are carried forward. These changes have effect from 13 July 2017.

23. If you have any questions about this change, or comments on the legislation, please contact Claire White on Telephone: 03000 545597 or email: claire.white@hmrc.gsi.gov.uk.