

Clause 8 and Schedule 4: Corporation tax relief for carried-forward losses

Summary

1. This clause and Schedule make changes to the loss reform legislation in Part 7ZA of the Corporation Tax Act 2010 (CTA 2010) to ensure that it meets the policy objectives which are to restrict relief for certain carried forward losses and also allow these to be used more flexibly.
2. The Schedule changes the way in which restricted losses are calculated by all companies and how the regime applies to insurers within the Basic Life Assurance and General Annuity Business (BLAGAB) in order to prevent companies accessing an excessive amount of the deductions allowance. This change commences with immediate effect from the date of announcement.
3. The Schedule also makes amendments to the calculation of terminal relief within section 45F CTA 2010, the allocation of the deductions allowance where a company is a member of more than one group, prevents carried-forward shock losses of insurance companies being surrendered as group relief and makes other minor consequential amendments.

Details of the clause and Schedule

4. This Clause introduces Schedule 4.

Schedule 4:

5. Paragraph 1 introduces the amendments to CTA 2010.
6. Paragraphs 2 and 3 make consequential amendments to sections 188DD and 188ED to substitute references to new section 269ZFA for references to section 259ZD(5), and also omit sections 188DD(4) and 188ED(4). Paragraph 3 also corrects a minor drafting error in section 188ED(5).
7. Paragraphs 4 and 5 omit the references to the BLAGAB deductions allowance from sections 269ZB(8) and 269ZC(6). The trading and non-trading profits deductions allowances are now restricted to the company's deductions allowance less the non-trading and trading deductions allowances respectively.
8. Paragraph 6 omits from the calculation of the allowable relevant deductions in section 269ZD(2)(b) any deductions made by the company for the accounting period for carry forward of BLAGAB trade losses against BLAGAB trade profits. It amends the meaning of "relevant maximum" in section 269ZD(4) (restriction on deductions from total profits) to include a new definition of "relevant profits" (inserted by new section 269ZFA). The previous

definition of “relevant profits” in section 269ZD(5) is repealed. It also amends section 269ZD(7) to omit BLAGAB trade profit from the requirement not to restrict the sum of any relevant deductions (section 269ZD(2)) where total profits, as calculated by step 1 in section 269ZF(3), is nil.

9. Paragraph 7 repeals section 269ZE (restriction on deductions from total profits: insurance companies).
10. Paragraph 8 inserts new section 269ZFA which includes a new definition of “relevant profits”. This is the amount of the company’s “qualifying profits” (which are the “modified total profits” less the amount of in-year reliefs such as group relief given by steps 1 and 2 in section 269ZF(3)) less the amount of the company deductions allowance (given by section 269ZD(6)).
11. Paragraph 9 inserts new section 269ZFB that includes modifications to sections 269ZD(7) and 269ZFA(2) for insurance companies carrying on BLAGAB in the period. The “qualifying profits” are calculated as given by steps 1 and 2 in section 269ZF(3) but as though section 269ZF(4)(a) only ignored company distributions referable to BLAGAB taxed under Part 9A CTA 2009 by reason of an election under section 931R CTA 2009, and only the policyholders’ share of the BLAGAB I-E profit is excluded by section 269ZF(4)(d).
12. Paragraph 10 omits subsection 269ZJ(4).
13. Paragraph 11 substitutes section 124C FA 2012 for section 124E FA 2012 in subsection 269ZQ(2)(b).
14. Paragraph 12 inserts new section 269ZV(5A) that prevents a company being allocated a share of the deductions allowance from a group of which is it an ultimate parent (within section 269ZZB(3)) if it is also a member of another group.
15. Paragraphs 13 and 14 make consequential amendments to sections 269CC and 269CN to substitute references to new section 269ZFA for references to section 259ZD(5).
16. Paragraph 15 makes a minor amendment to section 304(7) (certain deductions for losses made in a ring fence trade) to ensure that the reference to section 45B refers to post-1 April 2017 losses set against trade profits.
17. Paragraph 16 introduces amendments to Finance Act 2012 (FA 2012).
18. Paragraphs 17, 18 and 19 omit the references to section 124D (restriction on deductions from BLAGAB trade profits) from sections 124, 124A and 124C.
19. Paragraph 20 omits sections 124D and 124E (restriction on deductions from BLAGAB trade profits).
20. Paragraph 21 replaces section 45G CTA 2010 which covers the calculation of relief under section 45F where a part of an accounting period falls within the 3-year maximum period for which relief is allowed. New section 45G limits the amount of relief where only part of the accounting period falls within the 3 year maximum period. For losses that can only be set against trading profits, the maximum relief due is the proportion of trading profits for the accounting period that the part period bears to the whole accounting period. For example, if the part of a 12 month accounting period that falls within the 3 year period is 3 months, the

proportion is 3/12. For losses that can be set against total profits, the maximum relief due is the proportion of total profits for the accounting period that the part period bears to the whole accounting period, less the amount of any relief given for losses that can be set only against trading profits.

21. Paragraph 22 amends section 188BG(3) so that carried forward BLAGAB trade shock losses under sections 124A(2) and 124C(3) FA 2012 are included in the types of losses that cannot be surrendered by a Solvency 2 insurance company.
22. Paragraph 23 introduces amendments to CTA 2010 that relate to the legislation on transferred trades in Chapter 1 of Part 22.
23. Paragraph 24 amends section 357JI (Northern Ireland losses: transfers of trade without a change of ownership) to include references to legislation in Chapter 1 of Part 22 as amended by Part 8 of Finance (No 2) Act 2017.
24. Paragraph 25 amends section 676 (disallowance of trading loss on change of ownership of company: company reconstructions) to include references to legislation in Chapter 1 of Part 22 as amended by Part 8 of Finance (No 2) Act 2017 and to extend the trading losses covered to include sections 45A, 45B, 303B, 303C and 303D.
25. Paragraph 26 amends section 676AF (restriction on use of carried-forward post-1 April 2017 trade losses) to prevent losses transferred to a company under Chapter 1 of Part 22 before its change of ownership from being deducted from “affected profits” (within section 676AE) that arise after.
26. Paragraph 27 amends section 676BC (disallowance of relief for trade losses) to prevent losses transferred to a company under Chapter 1 of Part 22 before its change of ownership from being deducted from an amount of total profits that represent a “relevant gain” (within section 676BE) that arise after.
27. Paragraphs 28, 29, 30 and 31 include commencement provisions. For the amendments to the computation of “relevant profits” and BLAGAB, the changes apply to accounting periods beginning on or after 6 July 2018. All other changes apply to accounting periods beginning on or after 1 April 2019. For accounting periods that straddle the commencement date, the periods that fall before and after this date are treated as separate accounting periods for the purpose of applying the amendments. Where it is necessary to apportion amounts to the separate periods, this should be done on a time basis unless this produces a result that is unjust or unreasonable in which case a just and reasonable method is used.

Background note

28. Loss reform was introduced in section 18 and Schedule 4 of Finance (No 2) Act 2017 with effect from 1 April 2017.
29. The reform made two main changes. It increased 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. Additionally, it limited the amount of profit against which carried-forward losses can be set.

30. The following paragraphs provide the background to the various amendments made to the loss reform rules.
31. Loss restriction calculation: in calculating the amount of profits against which carried-forward losses can be set, each group (or a company that is not part of a group) has an annual allowance of £5m profits. Carried-forward losses can be set against that amount without restriction. Losses in excess of that amount are restricted to a maximum of 50% of the company's total profits for the period.
32. BLAGAB: The way in which the reform applies is modified for certain industries (for example, insurers). For BLAGAB the policyholders' share of the profit is outside of the scope of the loss reforms so that policyholders are not unfairly impacted by the reforms. No changes were made to the basis of calculation of BLAGAB profit, in particular the loss restriction rules do not apply to any items that are treated as a 'BLAGAB management expense'. The loss reforms as described above apply to carried-forward BLAGAB trade losses and to the shareholders' (SH) share of the 'I minus E' profit.
33. Shock losses: Insurers also have special rules within the loss reforms for "Shock losses". These losses made by insurers are carried-forward and relieved without restriction, however, they cannot be used as flexibly as other losses. Under Solvency II insurers are required to determine the amount of capital they would need to survive a hypothetical catastrophic stress event. This is known as their Solvency Capital Requirement or SCR. "Shock losses" can be claimed by an insurer where they suffer a loss that exceeds its "shock loss threshold" which is set at 90% of the SCR, as this represents a catastrophic shock event having taken place.
34. Terminal relief: This allows a company that has ceased trading to carry back any unused carried-forward trading losses and set these against profits of the 3 years ending with the date of cessation without restriction. Certain types of losses can only be set against trading profits of the company whilst others can be set against total profits.
35. Transfer of trades without a change of ownership: The legislation within Chapter 1 of Part 22 CTA 2010 allows the losses of a trade to be transferred where the trade is transferred without a change of ownership. The legislation was amended by Part 8 of Finance (No 2) Act 2017 to apply to the trade losses introduced by sections 45A, 45B, 45F, 303B, 303C and 303D as part of loss reform.
36. If you have any questions about this change, or comments on the legislation, please contact Clare Dunne on 03000 585961 (email: clare.e.dunne@hmrc.gsi.gov.uk)

