



Corporation tax: avoidance involving losses

Who is likely to be affected?

Companies using avoidance schemes that involve claims to relief for capital losses against gains arising on derivative contracts and other financial products.

General description of the measure

The measure clarifies the operation of one of the chargeable gains Targeted Anti-Avoidance Rules (TAARs) and confirms that it applies generally to the contrived use of capital losses to reduce income profits by whatever means. It puts beyond doubt that the rule can counter arrangements that seek to take advantage of provisions other than the Taxation of Chargeable Gains Act 1992 (TCGA92) that specify that chargeable gains or capital losses accrue.

Policy objective

This measure supports the Government objective of promoting fairness in the tax system. The measure does this by revising an anti-avoidance measure to confirm that it has the general application it is intended to have to prevent loss of tax through the misuse of capital losses.

Background to the measure

This measure was announced by Written Ministerial Statement on 30 January 2014.

No formal consultation is planned.

Detailed proposal

Operative date

This measure will have effect where a chargeable gain accrues on a disposal on or after 30 January 2014. It will have effect in relation to arrangements entered into on or after that date where a gain accrues otherwise than on a disposal.

Current law

The rule in question, TAAR 3, is set out at sections 184G to 184I TCGA 92. TAAR 3 is intended to counter the use of capital losses in contrived arrangements that shelter income profits through the creation of a capital gain. TAAR 3 denies relief for any allowable losses against that gain. It only has effect if a notice is issued in accordance with section 184I.

Section 184G (Avoidance involving losses: schemes converting income into capital) deals with the circumstances where income is converted into a capital receipt and section 184H (Avoidance involving losses: schemes securing deductions) where an income deduction arises in connection with an accrued gain. TAAR 3 has effect when the conditions specified in one or other of these sections are met.

One condition in section 184G is that a receipt arises on a disposal of an asset and that a chargeable gain accrues to the company on the disposal.

A requirement for section 184H to apply is that the company accruing the chargeable gain, or a company connected with it, incurs expenditure that is allowable as a deduction in computing its total profit chargeable to corporation tax.

Proposed revisions

Legislation will be introduced in Finance Bill 2014 to make the following changes:

Section 184G: will now refer to a “receipt or other amount”. References to a disposal in Conditions A and B are removed.

Section 184H: will now refer to “income deduction” instead of expenditure and a definition of “income deduction” is provided. Reference to a disposal in Condition A is removed.

Summary of impacts

Exchequer impact (£m)	2014-15	2015-16	2016-17	2017-18	2018-19
	This measure is not expected to have an Exchequer impact. This measure supports the Exchequer in its commitment to protect revenue.				
Economic impact	The measure is not expected to have any significant economic impact.				
Impact on individuals and households	No impact is expected as the measure only relates to companies.				
Equalities impacts	No equalities impacts are expected.				
Impact on business including civil society organisations	The measure addresses avoidance using contrived schemes involving capital losses. Countering these schemes prevents users gaining an unfair tax advantage. There will be no impact on normal commercial transactions of businesses and civil society organisations.				
Operational impact (£m) (HMRC or other)	No operational impact is expected.				
Other impacts	Other impacts have been considered and none have been identified.				

Monitoring and evaluation

This will be through monitoring disclosures of new avoidance schemes seeking to circumvent the measure.

Further advice

If you have any questions about this change, please contact Martin Trott on 03000 585619 (email: martin.trott@hmrc.gsi.gov.uk).

Declaration

David Gauke MP, Exchequer Secretary to the Treasury, has read this Tax Information and Impact Note and is satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impacts of the measure.

1 Avoidance involving losses

- (1) In section 184G of TCGA 1992 (avoidance involving losses: schemes converting income to capital) –
 - (a) for subsections (2) and (3) substitute –
 - “(2) Condition A is that a receipt or other amount arises to a company directly or indirectly in consequence of, or otherwise in connection with, any arrangements.
 - (3) Condition B is that –
 - (a) that amount falls to be taken into account in calculating a chargeable gain (the “relevant gain”) which accrues to a company (“the relevant company”), and
 - (b) losses accrue (or have accrued) to the relevant company (whether before or after or as part of the arrangements).”, and
 - (b) in subsection (4), for “the receipt” substitute “the amount mentioned in subsection (2)”.
- (2) In section 184H of that Act (avoidance involving losses: schemes securing deductions) –
 - (a) in subsection (2)(b), omit “on any disposal of any asset”,
 - (b) for subsection (3) substitute –
 - “(3) Condition B is that the relevant company, or a company connected with the relevant company, becomes entitled to an income deduction directly or indirectly in consequence of, or otherwise in connection with, the arrangements.”,
 - (c) in subsection (4), for paragraph (a) substitute –
 - “(a) that income deduction, and”, and
 - (d) in subsection (10), after the definition of “arrangements” insert –
 - ““income deduction” means –
 - (a) a deduction in calculating income for corporation tax purposes, or
 - (b) a deduction from total profits,”.
- (3) The amendments made by this section have effect –
 - (a) in relation to arrangements entered into on or after 30 January 2014, and
 - (b) in relation to arrangements entered into before that date but only to the extent that any chargeable gain accrues on a disposal which occurs on or after that date.

EXPLANATORY NOTE

CLAUSE X : CORPORATION TAX AVOIDANCE INVOLVING LOSSES

SUMMARY

1. This clause clarifies the operation of one of the Chargeable Gains Targeted Anti-Avoidance Rules. In doing so it confirms the rule will apply to arrangements that use statutory provisions outside of the Taxation of Chargeable Gains Act 1992 (TCGA 1992) that specify that a chargeable gain or a capital loss accrues.. It also confirms the rule applies to arrangements which generate an income deduction by whatever means. The changes put beyond doubt that the rule acts generally to counter the contrived use of capital losses to reduce income profits.

DETAILS OF THE CLAUSE

2. Section (1) amends section 184G of TCGA 1992. References to “receipt” in the current section have been changed to confirm that the term includes any amount taken into account in calculating a chargeable gain. The references to disposal in Conditions A and B have been removed.

3. Section (2) amends section 184H of TCGA 1992. The amended section now uses the term “income deduction” instead of “expenditure”. A definition of income deduction is now within sub-section (10) to explain that it includes any form of deduction in the computation of income or profits. The reference to a disposal in Condition A has been removed.

4. Section (3) provides that the amendments will apply from the date of announcement where a gain accrues on a disposal on or after that date or, in the case where there is no disposal, to arrangements that are entered into on or after that date.

BACKGROUND NOTE

5. The three Targeted Anti-Avoidance Rules within TCGA 1992 have wide application to counter arrangements that seek to misuse capital losses to obtain a tax advantage. The abuses they are intended to counter are;

- TAAR 1 - the contrived creation of capital losses where there has been either no economic loss or a disposal of any substance;
- TAAR 2 – the sale of companies between groups to allow losses incurred by one group to be relieved against the gains of another; and,
- TAAR 3 – the use of capital losses to shelter income profits.

The measure confirms that TAAR 3 applies generally to the contrived use of capital losses to reduce income profits.

FINANCE BILL 2014

If you have any questions about this change, or comments on the legislation, please contact Martin Trott on 03000 585619 (email: martin.trott@hmrc.gsi.gov.uk).