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**Restriction on brought forward reliefs in the UK  
banking sector**

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**Technical note (revised)**  
25 March 2015

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## Foreword

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On 3 December 2014 the Chancellor of the Exchequer announced that the Government will introduce legislation in the Finance Bill 2015, which will restrict the proportion of banks' annual taxable profit that can be offset by certain carried-forward reliefs to 50 percent.

The restriction will apply to carried-forward:

- trading losses;
- non-trading loan relationship deficits; and
- management expenses.

The restriction will take effect from 1 April 2015 and will only apply to relevant reliefs accruing prior to this date.

This document provides technical detail on the circumstances and manner in which the proposed legislation will operate.

Draft legislation will be published for technical consultation on 3 December 2014.

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## Chapter 1 – Introduction

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### **Companies within the restriction**

1. The restriction will apply to all banking companies.
2. For the purposes of this note, 'banking activity' is used to refer to relevant regulated activity.
3. Chapter 3 contains more details.

### **Restriction on brought forward amounts**

4. The UK's tax system allows reliefs that cannot be used in the current year to be carried forward indefinitely and used against profits as they arise.
5. Such reliefs may be allowed by means of a claim or automatically set against income of the same type or total profits.
6. Under the restriction described in this technical note, relevant reliefs will be limited in use to 50 percent of the relevant profits of a company within the scope.
7. The 'relevant reliefs' are carried-forward relief for:
  - trading losses;
  - non-trading loan relationship deficits;
  - and management expenses

where these have accrued before 1 April 2015. Any carried forward reliefs of these types accrued from 1 April 2015 will not be restricted.

8. The relevant profits in the calculation are after reliefs for the period, including group relief, but not including any of the relevant reliefs mentioned above or reliefs carried back from later periods. For the purposes of the restriction the relevant profits are split into relevant trading profits and relevant non-trading profits.
9. The calculation of the maximum amount of relevant relief allowed will be:
  - i) For restricted brought forward trading losses, 50 percent of the relevant trading profits of the company for the period;
  - ii) For restricted brought forward non-trading loan relationship deficits, 50 percent of the relevant non-trading profits of the company for the period; and
  - iii) For restricted brought forward management expenses, the balance of 50 percent of the total relevant profits of the company, after reduction by the relief given under i) and ii) above.
10. If the company has no profit or a loss for the period they will still be within the restriction, even though there would be no practical effect of being so.

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11. Any unused reliefs can be carried forward and used in the usual manner, subject to the restriction, in future periods.
  12. As far as possible existing rules for the precedence of reliefs, use of reliefs against type or total profits, and method of relief (claim or automatic off-set) have been retained, though certain changes are necessary.

### **Commencement**

13. The restriction applies for accounting periods beginning on or after 1 April 2015, with transitional rules for accounting periods straddling that date.
14. Where a company's accounting period straddles 1 April 2015 two notional accounting periods are created. One ending 31 March 2015 and calculated on the existing basis, so that the full amount of profits arising before that date can be relieved by brought forward reliefs, and one running from 1 April 2015 and calculated on the basis described in this note.
15. The proportion of profits is apportioned on a time basis, unless such an apportionment would be unjust or unreasonable.

### **Relevant reliefs accruing before 1 April 2015**

16. Any relevant relief recognised and carried forward at the end of an accounting period ending before 1 April 2015 will be within the restriction.
17. Where a company's accounting period straddles 1 April 2015 the restriction applies to create two notional accounting periods. Any relevant relief that had accrued by the end of the notional period ending 31 March 2015 will be within the restriction, and any relevant relief that accrues from 1 April 2015 onwards will not be restricted.
18. The relevant relief is apportioned on a time basis, unless such an apportionment would be unjust or unreasonable.
19. Any relevant relief carried forward from accounting periods beginning from 1 April 2015 onwards will not be restricted (including notional periods beginning 1 April as a consequence of the commencement rules).

### **Targeted anti-avoidance rules (TAARs)**

20. There are two TAARs. The first is an anti-forestalling provision to prevent a banking group accelerating the use of their losses before the restriction comes into force. The second is intended to prevent profit shifting within banking groups after the rules come into force.

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## Chapter 2 – Overview of the restriction

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### **Restriction on brought forward amounts: relevant reliefs and relevant profits**

21. The total amount of relevant reliefs brought forward from a period ending before 1 April 2015 that a company in scope can use in an accounting period cannot exceed 50 percent of the company's profits for the period after other reliefs of the period or previous periods.
22. Other reliefs brought forward (such as capital losses, or UK property losses) are not included in the restriction and can be brought forward and relieved in full.
23. A company within the restriction must perform an initial calculation of its relevant profits to find out how much relevant relief is available. To find its relevant profits the company must:
  - i) Calculate its trading profits before relief for restricted brought forward trading losses;
  - ii) Calculate its non-trading profits before relief for restricted brought forward non-trading loan relationship deficits;
  - iii) Calculate any in-year reliefs that the company will use, such as group relief, but ignoring management expenses brought forward and relief carried back from later periods;
  - iv) Split that relief against total profits proportionately between the trading and non-trading profits calculated as above – this produces the relevant trading profits and relevant non-trading profits;
  - v) Relief for restricted brought forward trading losses is then limited to 50 percent of the relevant trading profits;
  - vi) Relief for restricted brought forward non-trading loan relationship deficits is limited to 50 percent of the relevant non-trading profits; and
  - vii) Relief for brought forward management expenses is limited to the balance of 50 percent of the total relevant profits (trading and non-trading together) after relief given for restricted brought forward trading losses and non-trading loan relationship deficits.
24. The relevant trading profits and the relevant non-trading profits, reduced by the brought forward reliefs allowed in the calculation, will feed into the company's calculation of total profits.
25. The trading profits and non-trading profits at i) and ii) are those profits after any unrestricted brought forward reliefs have been given.
26. Any subsequent changes to the amount of in-year relief the company has against total profits at (iii), by a new group relief claim for example, will mean that this calculation should be redone to revise the amounts of relevant relief available.

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27. The apportionment of relief against total profits made at (iv) makes an assumption about the way the company will claim that relief for the purposes of the calculation only. If, for example, a company has £400 of trading profits and £600 of non-trading profits, and claims £500 of group relief, for the purposes of the calculation it is assumed that the £500 will be claimed 40 percent against trading and 60 percent against non-trading. This assumption is only for the purposes of the calculation and does not affect the way that the company may actually decide how to use the group relief.
28. If appropriate the company may then claim to carry back any available reliefs from future periods. This will not necessitate a recalculation.

### **Example**

29. A Limited has the following income and reliefs:

#### Brought forward reliefs

##### Trading losses

Accrued on or after 1 April 2015	-£50
Accrued before 1 April 2015	-£300

##### Non-trading loan relationship deficits

Accrued on or after 1 April 2015	-
Accrued before 1 April 2015	-£20

##### UK property losses

UK property losses	-£50
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##### Capital losses

Capital losses	-£10
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#### Results for the period

Trading profits	£250
Income from a UK property business	£100
Non-trading loan relationship deficit	-£50
Miscellaneous losses	-£20
Group relief available from fellow group company	-£50
Chargeable gains	£60

30. Note that the normal rules still apply to the use of the brought forward amounts, so the trading losses must be used against profits of the same trade, the UK property losses will be available against total profits, and the non-trading losses must be set against non-trading profits.
31. However the rules define the allowable amount of the restricted trading losses and non-trading deficits to be automatically off-set.
32. The amount of in-year relief the company can claim is based on the profits without including the relevant reliefs so, in effect, the group relief is available in priority to those relevant reliefs brought forward (but not before other reliefs of the period).

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33. Calculate the trading profits for the period ignoring restricted reliefs:

Trading profits	£250
/less Unrestricted trading losses brought forward	-£50
Resulting trading profits	<u>£200</u>

34. Calculate the non-trading profits for the period ignoring restricted reliefs:

UK property business income	£100
Chargeable gains	£60
/less Capital losses brought forward	-£10
	<u>£50</u>
Resulting non-trading profits	<u>£150</u>

35. Calculate relief against total profits

The company intends to claim the non-trading loan relationship deficit of the period against its own profits.

Non-trading loan relationship deficit	-£50
UK property business losses b/f	-£50
Group relief	-£50
Total reliefs	<u>-£150</u>

36. Proportionately split the relief against total profits

Trading profits $200/(200+150) = 57\%$	x £150	£86
Non-trading profits $150/(200+150) = 43\%$	x £150	£64

37. Calculate the relevant trading, non-trading, and total profits

Trading profits	£200
/less Trading proportion against total profits	-£86
Relevant trading profits	<u>£114</u>
Non-trading profits	£150
/less Non-trading proportion against total profits	-£64
Relevant non-trading profits	<u>£86</u>
Total relevant profits	<u>£200</u>



38. The miscellaneous losses are not included, as they cannot be relieved against the total income of the company and must be carried forward.
39. Even if the result of the company's calculation was £nil or a loss the company remains in the restriction if it meets the criteria of the scope, though in practical terms there would be no restriction. Only if the starting position (i.e. the profits of the company before any relevant relief) was £nil would the restriction not apply.

40. Apply 50 percent to the relevant profits:

	<u>Profit</u>	<u>x 50%</u>
Relevant trading profits	£114	£57
Relevant non-trading profits	£86	£43
Total relevant profits	£200	£100

41. Hence, when calculating its profits chargeable to tax the company will allow a maximum of £57 of relief for trading losses brought forward from prior to 1 April 2015, and £43 for non-trading loan relationship deficits.
42. If the company had less than these amounts available as brought forward trading losses and non-trading loan relationship deficits, then the balance would be available to allow relief for management expenses accruing before 1 April 2015. In the example above, the non-trading deficits brought forward are £20, so less than the £43 allowed; the balance would be available as restricted management expenses brought forward.
43. Note that the restriction does not enable the company to override the existing rules for the automatic use of reliefs brought forward. A company with trading losses or management expenses must use them up to the maximum restricted amount allowed by the calculation (albeit the maximum restricted amount may be reduced by claiming more relief against total profits than would normally be available). The existing rules for claiming to carry forward non-trading deficits on loan relationships still apply. Chapter 6 has an example of this.

44. Calculate the profits chargeable to corporation tax:

The total profits chargeable to tax will therefore be:

Trading profits	£250	
<i>less</i> Trading losses brought forward	-£107	
		£143
UK property business income	£100	
<i>less</i> Non-trading deficits brought forward	-£20	
		£143

	£80
Chargeable gains	£60
<i>less</i> Capital losses brought forward	-£10
	£50
<b>Total</b>	<b>£273</b>
<i>less</i> Non-trading loan relationship deficit	-£50
UK property business losses b/f	-£50
Group relief	-£50
	-£150
<b>Profits chargeable to CT</b>	<b>£123</b>

45. Any subsequent changes to the calculation that produced the maximum amount available for relief will entail a re-calculation of the amount allowed under the restriction (for example, the company chooses not to claim the group relief). A claim to carry back relief from future periods would not be such a change.

46. Allow any reliefs carried back:

If the company should make a loss in the following year that is available for carry back it can then set it against the £123 under the current rules without any need for a recalculation of the amount of relevant relief available.

**Double taxation relief**

47. A banking company is still able to allocate its relief in the way that is most beneficial for double tax relief purposes. So, for example, if a banking company had relevant carried-forward losses, and made £1,000 of profits of which £500 arose from a branch and had been taxed outside the UK, that company could choose to make that £500 with double tax relief the 50 per cent of the profits that was left exposed to tax, and use the available £500 of carried-forward relief against the other £500 of profits.

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## Chapter 3 – Companies included in the restriction

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### Overview

48. The restriction will apply to banking companies.

### Banking companies

49. A banking company means a company that is authorised for the purposes of FISMA 2000 and carries on certain regulated activities within the UK. This includes companies that are prudentially regulated by the Prudential Regulation Authority and the Financial Conduct Authority. The regulated activities include:

- accepting deposits;
- dealing in investments as principal;
- dealing in investments as agent;
- arranging deals in investments;
- safeguarding and administering investments;
- entering into regulated mortgage contracts.

50. The definition of banking company also includes building societies and UK corporate partners of partnerships that carry on certain regulated activities within the UK.

51. Certain types of company are excluded from the definition of banking company because they carry on relevant regulated activities for a specific purpose only. These excluded companies include:

- Insurance companies
- Pension Scheme Managers
- Investment Trusts
- Asset Managers
- Commodities Traders
- Spread Betting Companies

52. Certain types of company are excluded by virtue of their legal structure, including friendly societies, credit unions and building societies. However, building societies are separately brought back within scope of the measure.

53. A company that has none of the reliefs listed in Chapter 4 is still within the scope of Part 7A if it meets the other requirements, although in practical terms there is no effect to the restriction.

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**Particular inclusions, exclusions, and allowances**

54. Chapter 6 provides details of reliefs that will fall outside the restriction because they were generated in the first five years of trading.
55. Building societies and banking companies in their groups receive an allowance of £25,000,000 to designate relevant losses as unrestricted.

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## Chapter 4 – Reliefs included in the restriction

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### List of reliefs restricted

56. The restriction applies to the following reliefs if they are accrued or recognised at 1 April 2015:
- Trading losses brought forward against profits of the same trade,
  - Non-trading loan relationship deficits brought forward as non-trading losses against non-trading profits,
  - Management expenses of an investment business brought forward and treated as expenses of the period and allowable against total profits,
  - Management expenses includes charitable donations or losses of a UK property business treated as management expenses.
57. Chapter 6 contains detailed examples of how to identify whether the relief has accrued before 1 April 2015, but in broad terms if the relief arose in an accounting period ending before 1 April 2015 it is within the restriction, and if it arose in an accounting period straddling 1 April 2015 then that accounting period is split and the loss apportioned.

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## Chapter 5 – Notable changes to the calculation

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### Group relief

#### Claiming group relief (and other relief against total profits)

58. Under the existing rules group relief can only be claimed after all other reliefs of the current period and previous periods. Under the restriction, however, the relevant reliefs can be effectively displaced by group relief.
59. This means that a company under the restriction may potentially be able to claim more group relief, because at the stage it is claimed the company's profits will not be reduced by the relevant reliefs. Doing so, however, will reduce the profit figure used for calculating the available amount of relevant relief.

#### Surrendering group relief

60. To the extent that a company surrenders any relief of the current period as group relief these amounts will not be reflected in that company's profits when calculating the allowable reliefs it can bring forward.
61. A company can only surrender certain 'relevant amounts' to the extent that they exceed the company's profit related threshold. The profit related threshold is calculated without including reliefs of other periods including reliefs brought forward and treated as being of the current period (such as losses of a UK property business). The restriction should therefore have no effect on the surrender of relevant amounts.

### Qualifying charitable donations

62. Under the existing rules qualifying charitable donations can only be claimed after all other reliefs (apart from group relief and relief from future periods), and only to the extent that it reduces the profits to £Nil. Under the restriction, brought forward reliefs are given after relief for qualifying charitable donations.
63. Similarly to group relief, this means that a company under the restriction may potentially be able to use more relief for qualifying charitable donations, because at the stage it is given the company's profits will not be reduced by the relevant reliefs. The qualifying charitable donations will, however, reduce the profit figure used for calculating the available amount of relevant relief.

### Management expenses

64. Management expenses brought forward are treated as management expenses of the period, and under the current rules relief is given for these before any other relief from total profits. As a consequence of the method described in this note, relief for most other reliefs from total profits could be given in preference over restricted management expenses brought forward, as described for group relief and qualifying charitable donations.

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### **Interaction with the controlled foreign company rules**

65. A company within this restriction that is also a chargeable company for the purposes of Part 9A of the Taxation (International and Other Provisions) Act 2010 may not claim any of its relevant reliefs in order to reduce the sum charged under that Part.

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## Chapter 6 – Detailed examples

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### Existing rules on automatic off-set of brought forward reliefs

66. The three relevant reliefs would, under the existing rules, be automatically brought forward and off-set against the appropriate level of income or total profits of the current period.
67. These rules act to revise the amount of these reliefs that are automatic off-set by restricting the amount that is available.

### Example

68. A company has:

Brought forward reliefs within the restriction

Trading losses	-£100
Non-trading loan relationship deficit	-£100
Management expenses	-£100

Results for the period

Trading profits	£200
Non-trading profits on intangible assets	£100

69. The relevant trading profits are £200, so 50 percent of that is the maximum restricted amount of trading losses available: £100. The relevant non-trading profits are £100, so 50 percent of that is the maximum restricted amount of non-trading loan relationship deficits available: £50. The total of all restricted reliefs allowed is £150.
70. Of the brought forward amounts:
- The trading profits would be off-set automatically against the trading profits, and
  - The non-trading loan relationship deficits would automatically be off-set against non-trading income unless the company claims to carry them forward under section 458 of CTA 2009.
71. The company can use all of the £100 of trading losses it has brought forward, so must do so.
72. £50 out of the £100 non-trading deficits are allowed, and would be automatically used against the non-trading profits of the period, unless a claim was made to carry the deficits forward.
73. If the company claims to carry the non-trading deficits forward, then the balance of £50 of allowable relevant reliefs would be available as management expenses. These are given automatically and set against total profits, as under the current rules.



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## Group relief

74. Companies within the restriction can effectively claim and surrender group relief before utilising certain brought forward reliefs.
75. As explained in Chapter 5 this means that a company may be able to claim more relief because its profits are higher for not having considered those brought forward reliefs.

### Example

76. B1 Limited and B2 Limited are in a group relief relationship, and both within the restriction.
77. B1 has the following income and reliefs and wishes to claim group relief from B2:

<u>Brought forward reliefs within the restriction</u>	
Trading losses	-£500
Non-trading loan relationship deficits	-£100
<u>Results for the period</u>	
Trading profits	£500
Income from a UK property business	£100

78. B2 has the following income and reliefs and consents to surrender group relief to its fellow group company B1:

<u>Brought forward reliefs within the restriction</u>	
Non-trade loan relationship deficit	-£100
<u>Results for the period</u>	
Trading losses	-£200
Income from a UK property business	£100
Non-trading losses on intangible assets	-£50

79. B1's calculation of available total profits

Under the current rules, B1 can only claim group relief against its available total profits; that is total profits after any relief automatically given or actually claimed and as reduced by any potential relief from trading losses or excess Capital Allowances of the period (regardless of whether those are actually claimed).

80. Absent the restriction, the trading losses brought forward would automatically be set against B1's trading profits of the period. The non-trading losses from the non-trading loan relationship deficit would also automatically be set against the UK property business income absent a claim to carry them forward. Assuming no such claim, a company like B1 but outside the restriction would

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have available total profits of £nil, so would not be able to claim any group relief.

81. Within the restriction the amount of the carried-forward of reliefs available is dependent on a calculation of relevant profits. For the purposes of this calculation B1 has available total profits of up to £600 (the profits of the period without taking into account the relevant reliefs).

82. B2's calculation of amount available for surrender

The trading losses can be surrendered in full. The non-trading losses on intangible assets can only be surrendered to the extent that they exceed B2's profit related threshold. The profit related threshold is £100, so these cannot be surrendered.

83. As noted in Chapter 5, B2's profit related threshold will not, under the existing rules, take account of relief from previous periods so there is no impact on B2 in being in the restriction.

84. B2 has £200 (the trading losses) available to surrender. If B2 chooses to claim the non-trading loss on intangibles and £50 of the trading loss against its own profits from the UK property business it will have relevant profits of £nil and will be unable to claim any of its brought forward relief.

85. If it chooses to surrender the trading loss in full then it will be left with relevant non-trading profits of £50, of which 50 percent (£25) will be available to be off-set with relief brought forward. As this would happen after group relief, B2 would therefore be left with the £25 exposed to tax.

86. B2 claims the non-trading intangibles losses in full, consents to surrender £150 of trading losses to B1, and claims the balance of £50 of the trading losses against its UK property income. This leaves B2 with profits of £nil. B2 has not used any of its brought forward non-trading deficit.

87. B1's calculation of profits chargeable to CT:

B1's relevant profits will be £600 less the £150 group relief claimed from B2: £450. This will be split for the purposes of the restriction into:

- Trading profits of £500 less  $(500/600 \times 150 =)$  £125, leaving £375; and
- Non-trading profits of £100 less  $(100/600 \times 150 =)$  £25, leaving £75.

88. B1 can therefore use up to  $(375 \times 50\%)$  £188 of trading losses brought forward, and up to  $(75 \times 50\%)$  £38 of non-trading deficits brought forward.

Trading profits	£500
less Trading losses brought forward	-£188
	<hr/>
	£312

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UK property business income	£100
Less Non-trading deficit brought forward	-£38
	£62
Total	£374
less Group relief	-£150
Profits chargeable to CT	£224

89. The remaining trading losses of £312 and the non-trading deficits of £63 are carried forward to the next accounting period.

#### **Interaction with unrestricted group companies**

90. There will be companies within the group that are not restricted, and claims and surrender of group relief will be possible between companies inside and outside of the restriction.
91. As noted, companies surrendering group relief will not calculate the amounts available for surrender on a different basis (as these do not take account of relief from other periods). Hence the restriction will only make a difference where it is the claimant company that is within the restriction.
92. Where the claimant company is in the restriction and the surrendering company is not, then the claimant will calculate its available total profits before the relevant reliefs brought forward and the surrendering company will surrender relief under the current rules.

#### **Consortium claims to group relief**

93. A company owned by a consortium for the purposes of Part 5 of the Corporation Tax Act 2010 must calculate its amount available to surrender as if it had made any possible claims for trading losses of the year and made all possible claims for group relief.
94. If the company owned by a consortium is within this restriction, then when calculating the amount available for surrender the company must assume that relief for trading losses of the period and group relief can be given against the full relevant profits; that is against the profits without reduction by the relevant reliefs.
95. Similarly, a company owned by a consortium must calculate the amount of its available total profits as reduced by the group's potential relief (the maximum amount of relief the company owned by a consortium could claim from group companies).
96. If the company owned by a consortium is claiming relief and is within the restriction, any reduction for the group's potential relief should be based on claims against the profits not including any relevant reliefs.

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### Reliefs accruing before 1 April 2015

97. These rules will apply to the relevant reliefs where they have accrued before 1 April 2015. Where a relief accrues on or after that date it is not within the restriction.
98. Where relief has been recognised and carried forward in an accounting period after commencement, and arose in an accounting period ending before 1 April 2015 it will be included.
99. Where relief arises in an accounting period starting on or after 1 April 2015, it will not be included in the restriction.
100. Where relief arises in accounting period starting before 1 April 2015 and ending after it then an apportionment of the relevant relief is necessary. An apportionment must be made between a notional period up to and including 31 March 2015 and a notional period starting 1 April 2015.
101. Relevant reliefs that have accrued in the notional period up to and including 31 March 2015 will be included in the restriction. Those that accrue in the notional period beginning 1 April 2015 will not be included.
102. The apportionment works on a time basis, unless this would give an unjust or unreasonable result. Any other basis than time should do no more than distribute the relevant relief for the whole accounting period into the two notional accounting periods.
103. Where a company uses a basis other than time apportionment for the restriction they should, if appropriate, use the same basis for any apportionment of surrenderable amounts to overlapping periods for group relief.

### Commencement

104. Where a banking company's accounting period begins on or after 1 April 2015 the whole of the profits of that period are within the restriction. Where the accounting period starts before that date but ends afterward then an apportionment of profits is necessary.
105. The company must calculate its profits for the period under the restriction, so that an apportionment can be made between a notional period up to and including 31 March 2015 and a notional period starting 1 April 2015.
106. The company calculates the profit chargeable for the notional period up to 31 March 2015 on the current basis (full use of relevant reliefs), and applies the restriction to the calculation of profits for the notional period beginning on 1 April (restricted use of relevant reliefs).
107. The apportionment works on a time basis, unless this would give an unjust or unreasonable result. Any other basis than time should do no more than distribute the profit for the whole accounting period into the two notional accounting periods.

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108. Where a company uses a basis other than time apportionment for the restriction they should, if appropriate, use the same basis for any apportionment of available total profits to overlapping periods for group relief.

**Example**

109. A company has £400 of trading profits for the accounting period 1 January 2015 to 31 December 2015. The company has brought forward trading losses of £800, all of which accrued prior to 1 April 2015 (so will all be restricted).

110. The profits apportioned to the notional period 1 January to 31 March will be relievable in full. Those apportioned to the notional period 1 April to 31 December will be within the restriction.

111. On a time apportionment basis the calculation would be:

$$\frac{\pounds 400}{365} \quad \times 90 = \quad \pounds 99 \text{ outside the restriction}$$

$$\frac{\pounds 400}{365} \quad \times 275 = \quad \pounds 301 \text{ within the restriction}$$

112. When calculating the notional period to 31 March the company uses the normal basis, so £99 of the trading loss brought forward is automatically off-set against the trading profits for the notional period. This leaves (£800 - £99) £701 of trading losses available for the notional period beginning on 1 April.

113. The notional period 1 April to 31 December is under the restriction, so the company can only relieve 50 percent of the £301 (£151) with relevant brought forward trading losses. The off-set of trading losses would be automatic absent the restriction, so all of the £151 allowed must be used.

114. The company's profits for the whole period after relevant relief will be (£400 less £250) £150.

115. If the company had realised a Balancing Charge of £50 on 1 February 2015, they would be able to calculate the apportionment on a different basis to reflect this:

$$\frac{\pounds 350}{365} \quad \times 90 + 50 = \quad \pounds 136 \text{ outside the restriction}$$

$$\frac{\pounds 350}{365} \quad \times 275 = \quad \pounds 264 \text{ within the restriction}$$

116. The calculation would then allow £136 of the relief unrestricted, and 50 percent of £264 (£132), for total relief from the relevant trading loss of £268, leaving profits of £136.

117. If the company chose to claim group relief for an overlapping period from 1 April to 31 December, they would use the same basis for the calculation of total

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profits. Having relieved some or all of the relevant profits, this would reduce the amount of relevant relief available for the period.

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## Chapter 7 – Losses in a banking company's start-up period

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### Overview

118. Relevant reliefs arising in an accounting period prior to the one in which a company began to undertake banking activity are not within the restriction.
119. Relevant reliefs arising in an accounting period ending in the company's start-up period are also not subject to the restriction. The start-up period (subject to certain rules where the company is a member of a group) runs for five years from the commencement of undertaking banking activity.
120. A company begins banking activity on the day it first undertakes any of the following activities:
- accepting deposits;
  - dealing in investments as principal;
  - dealing in investments as agent;
  - arranging deals in investments;
  - safeguarding and administering investments;
  - entering into regulated mortgage contracts.
121. The start-up period begins on the commencement of banking activity, rather than on the date that regulatory approval is received. This encompasses the activities of companies that have not previously operated within the United Kingdom, or who began undertaking banking activity before the current UK regulation was in force.
122. Where a company has an accounting period that spans the end of the start-up period it must split this accounting period into two notional periods. The first notional period will end on the same day as the start-up period and the second will commence on the following day. Relevant reliefs arising in the first notional period are unrestricted, whilst those arising in the second notional period will be within the restriction.
123. For the purposes of calculating the losses carried forward at 1 April 2015, the rules assume that unrestricted losses arising before commencement of banking activity or within the start-up period are used before losses arising in subsequent years.

### Group companies already undertaking banking activity

124. If a banking company is a standalone company or is within a group that contains no other companies that undertake relevant regulated activities and remains so throughout the start-up period, then the start-up period runs for five years from the date that the company began banking activity.

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125. However, the five year start-up period may be reduced (possibly altogether) if a banking company is within a group that includes other companies that undertake banking activity; in this case the company's start-up period is taken to have begun at the earliest point any company in the group first undertook banking activity.
  126. Further, if within the start-up period, the company joins a group that contains other companies that undertake banking activity then the period may be reduced (possibly altogether). If the new banking company joins such a group, and the company does not represent a significant part of the group's overall banking activity, then the company adopts the earliest date the group began banking activity.
  127. Similarly if a company join the group the new banking company is in and they represent a significant proportion of the banking activity of the existing group, then the group will adopt the date that the joining company began banking activity.
  128. If a company's start-up period is curtailed (perhaps entirely) because it is in the same group as one that has undertaken banking activity for a longer period, the start-up period is permanently ended, regardless of whether the new banking company subsequently leaves the group and would meet the conditions to have a start-up period.
  129. If the conditions curtailing the start-up period are met part way through an accounting period, that accounting period is notionally split on the same basis as if the start-up period had reached its conclusion, and losses arising after the conditions are met will be restricted.
  130. The apportionment works on a time basis, unless this would give an unjust or unreasonable result. Any other basis than time should do no more than distribute the profit for the whole accounting period into the two notional accounting periods.
  131. Where a company uses a basis other than time apportionment for the restriction they should, if appropriate, use the same basis for any apportionment of available total profits to overlapping periods for group relief.
  132. 'Group' for the purposes of determining the amount of time the start-up period applies means a consolidated group for the purposes of international accounting standards or United States generally accepted accounting practice.



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## Chapter 8 – Allowance for building societies and their groups

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### Overview

133. Building societies, within the meaning of the Building Societies Act 1986, receive a £25,000,000 allowance, which they can use themselves or allocate to banking companies in their groups. Any banking company with an amount of allowance can designate relevant carried-forward reliefs as unrestricted.
134. The £25,000,000 is a one-off amount (rather than an annual one), which can be used over multiple accounting periods.
135. A building society itself has access to the allowance automatically. In order for a banking company in the building society's group to benefit from the allowance the building society must allocate an amount of allowance to that company.

### How the allowance will work

136. A banking company which has an amount of allowance can designate any relevant carried-forward losses as unrestricted. The designation is done in the company's tax return.
137. The designation can be included in an original return or as an amendment to a return. This must be done within the normal time limits for an original return or an amendment to a return (including under enquiry conditions).
138. The maximum amount a banking company can designate is the amount of allowance the company has which has not been allocated or re-allocated to another company.
139. Once an amount of relief is designated, the normal rules absent Part 7A will apply. This means that:
  - Trading losses carried-forward will automatically be set against profits of the same trade as part of the calculation of total profits;
  - Non-trading loan relationship deficits carried-forward will automatically be set against non-trading profits as part of the calculation of total profits; and
  - Management expenses carried-forward will be treated as management expenses of the year and automatically set against total profits before any other relief against total profits.
140. If a company made a claim to carry its non-trading loan relationship deficit forward to a future period under section 458 of CTA 2009 then the allowance would not be used and the designation would not be valid.
141. Relief used unrestricted will form part of the calculation of relevant profits and reduce that amount accordingly.

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### Example

142. The building society, BSX, has relevant carried-forward trading losses of £10m, and trading profits of the period of £2m. BSX does not have any other relief for the period.
143. BSX is using its own allowance, and has £1m of allowance available.
144. Under the restriction BSX would have relevant trading profits of £2m, so would be able to use £1m of carried-forward losses. This would leave taxable total profits of £1m.
145. BSX designates £1m of carried forward trading losses as unrestricted.
146. BSX now has relevant trading profits of £1m (£2m less £1m carried-forward), so is able to use £0.5m of restricted relief. This leaves taxable total profits of £0.5m.

### Allocation of building society's initial allowance [section 269C1]

147. The building society can allocate an amount of its £25,000,000 allowance to any of its subsidiary banking companies in its group. That subsidiary can then use the allowance to designate an amount of relevant losses as unrestricted in its tax return.
148. Only a building society may make an allocation. Group takes the International Accounting Standards meaning (or potentially that of US Generally Accepted Accounting Principles).
149. The allocation must be supported by the submission of a statement of allocation to HM Revenue & Customs by the building society.
150. The statement must include:
  - The amount of carried-forward loss allowance the building society had immediately before the allocation (this will be the amount of allowance the building society has which it has not used itself through designation);
  - The companies to which the allocation is made and the amount of allowance allocated to each of them; and
  - The total amount of allowance allocated by the building society.
151. The statement must be submitted to HM Revenue & Customs:
  - At or after the point the allocation is made, but
  - At or **before** the submission of the first tax return or amendment to a tax return in which any company in the group next makes a designation.
152. An officer of Revenue & Customs may accept a later statement of allocation as valid. Further guidance will be issued on the circumstances in which such a statement will be accepted.

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153. The building society may make multiple allocations, with the effects stacking. Each allocation is fixed unless a re-allocation is made. The figure in the statement for the total amount allocated will be the running total.
154. The allowance is not tied to an accounting period until designated. Thus, if a company received an allocation of allowance at a point after the period covered by a tax return but was still in time to submit or amend its tax return for that accounting period it could still claim the allowance for that period.
155. Amendment includes amendment of a return at the conclusion of an enquiry.

**Re-allocation of the allowance [section 269CJ]**

156. There may be situations after the initial allocation where:
- There are banking companies, including the building society, who have insufficient allowance to cover all of their losses, and
  - The amount the building society can allocate itself is not sufficient to make up the difference, but
  - There are unused amounts of allowance allocated to other banking companies in the group.
157. In these circumstances the building society may make a re-allocation to the banking companies in need of more allowance. The building society may also make a further allocation of its own initial allowance at the same time.
158. Only a building society may make a re-allocation.
159. The building society may re-allocate back to itself an amount of allowance previously allocated to one of its subsidiary companies. The building society may therefore have an amount of allowance from its initial allowance as well as an amount allocated to it.
160. Where an amount of allowance is re-allocated away from a banking company, it is no longer available to that company.
161. Where an amount has been allocated to a banking company and that banking company has since left the building society's group, that allowance is no longer available for re-allocation. Only the amounts of allowance in companies within the building society's group at the point of re-allocation can be re-allocated.
162. The re-allocation must be supported by the submission of a revised statement of allocation to HM Revenue & Customs by the building society.
163. The revised statement must include:
- The total amount of carried-forward loss allowance amongst the banking companies in the group immediately before the re-allocation;
  - The companies which had an amount of carried-forward loss allowance immediately before the re-allocation and the amounts of the allowance in each company; and

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- The companies which have an amount of carried-forward loss allowance immediately after the re-allocation and the amounts of the allowance in each company.
164. The amounts for the statement will be the amount of allowance each banking company has (including, for the building society, both the initial allowance and any amount previously re-allocated to), which has not been used already through designation. Essentially the remaining balance of the allowance across the group.
165. The statement must be submitted to HM Revenue & Customs:
- At or after the point the re-allocation is made, but
  - At or **before** the submission of the first tax return or amendment to a tax return in which any company in the group next makes a designation.
166. An officer of Revenue & Customs may accept a later statement of allocation as valid. Further guidance will be issued on the circumstances in which such a statement will be accepted.
167. The re-allocation will replace previous allocations, and will remain effective until any further re-allocation is made.

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## Chapter 9 – Targeted anti-avoidance rules (TAARs)

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168. There are two TAARs included in the new rules.

### Anti-forestalling rule

169. The first is an anti-forestalling provision and is intended to ensure that banking groups cannot take steps to accelerate the use of their losses between the date of announcement of the measure (3 December 2014) and its coming into effect (1 April 2015). Such arrangements are most likely to involve the banking company accelerating recognition of its own profits or the transfer-in of profits from a connected company.

170. The anti-forestalling rule will apply to arrangements entered into on or after 3 December 2014 where:

- A company that will be within the restriction has profits in a period ending before (or straddling) 1 April 2015;
- In the absence of the rule the company would be entitled to deduct from those profits reliefs that would, absent the arrangement, become relevant reliefs; and
- The profits arise because of an arrangement the, or a, main purpose of which was to secure a tax advantage by using relevant relief before Part 7A applies.

171. Where an arrangement meets the conditions, any profits arising from it cannot benefit from brought forward relief that falls into the definition of restricted relief in Part 7A.

172. The apportionment rules apply to periods that straddle 1 April 2015.

### Main rule

173. The rules contain a targeted anti-avoidance rule ('TAAR') to negate the tax benefits of arrangements entered into to circumvent the restriction. For the rule to apply one of the main purposes of the arrangements must be to secure a tax advantage for the company or the group.

174. The rule will not apply where the anticipated tax value of the arrangements is less than the anticipated non-tax value of the arrangement. This test may also be either at company level or group level.

175. The TAAR will be triggered where a company within the restriction enters an arrangement ("the tax arrangement") on or after 3 December 2014, and as a result of the arrangement:

- Profits arise to a company subject to restriction such that there is an increase in the use of any restricted brought forward reliefs; and

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- The main purpose, or one of the main purposes, of the tax arrangement is that the company, or that company taken with any connected companies, would secure a corporation tax advantage (i.e. a reduction in CT) that involves the use of any restricted brought forward relief against the profits; and
  - It is reasonable to assume when the tax arrangement is entered into that the tax value was expected to be greater than the non-tax value to that company, or to that company taken with any connected companies.

### **What happens if the rules apply**

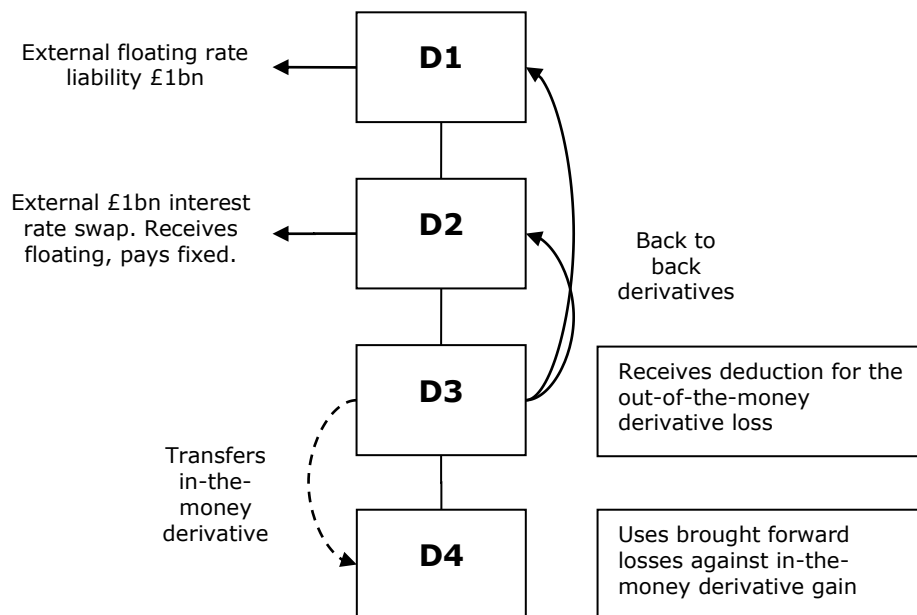
176. If the rules apply then the profits the company receives as a consequence of the arrangement cannot be included in the calculation of relevant profits. Other reliefs are available against the income (such as unrestricted brought forward reliefs, or any in-year reliefs), and the arrangement is otherwise undisturbed.

### **Analysis of the rules**

177. The profits are those that will be included in the calculation of the company's profits for the period and thereby increase the amount of brought forward reliefs the company could have used in a given period.
178. An arrangement is one that would increase the profits in the restricted company. The arrangement may also create a corresponding expense that allows relief in another company; the TAAR does not restrict that other relief.
179. The main purpose, or one of the main purposes of the arrangements must be to secure a corporation tax advantage involving the additional profits against which the relevant carried-forward losses can be used.
180. There is an objective test within the rules to ensure that commercial arrangements will not be caught, provided that the value of the non-tax benefits exceeds the value of the tax advantage and any value derived from the tax advantage.
181. Tax value includes both the tax advantage and any income derived from the tax advantage. The non-tax value is any other value derived from the arrangement, apart from the tax value.

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## Example of where the rules would apply



182. D Group uses inter-company derivatives to hedge. D4 has substantial amounts of trading losses brought forward from before 1 April 2015.
183. D1 has an external floating rate loan liability of £1bn.
184. D2 holds an interest rate swap with a third party, hedging the cash flow risk in respect of D1's loan. D2 receives floating, and pays fixed, interest on a notional principal of £1bn.
185. The swap and loan are linked via a third company in the group, D3, which has entered into back-to-back derivative positions with D1 and D2. From D3's perspective one of the swaps is in-the-money while the other is out-of-the-money. The use of a third company to link the positions is assumed to be standard practice.
186. If D3 triggers the derivatives without any further steps then it will realise both a gain and a loss, with a neutral result.
187. Instead, having sustained the position for several years, in the accounting period to 31 December 2016 D3 transfers the in-the-money derivative on a group neutral basis to D4. This company then sells it, generating profit that is covered by brought forward losses.
188. D3 then closes out the out of the money derivative realising a current year tax loss that can be used flexibly, thereby giving rise to a versatile current-year deduction that creates a tax benefit to the group by fully relieving otherwise taxable profits.

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189. In applying the TAAR it is first necessary to identify what constitutes the tax arrangements. These are the steps that consist of the transfer of the in-the-money swap from D3 to D4 and the realisation of the swaps. On the facts it appears that these arrangements would not have been entered into but for the opportunity to secure the corporation tax advantage. It therefore appears likely that a main purpose of the tax arrangements is to secure a corporation tax advantage for the group. It also appears that the tax arrangements do not themselves give rise to any other benefit apart from the tax saving. The TAAR is therefore likely to apply.

**Situations where HMRC would not apply the rules**

190. HMRC would not consider the anti-abuse rules to apply in the following situations:

- The arrangement does not create a tax advantage overall to the UK group.
- There is no motive to increase access to the carried-forward losses.
- The only reduction in tax is due to the claim and surrender of group relief between the two parties.
- The value of the tax advantage is less than 50 percent of the net overall value to the group of entering into the arrangement.

191. An example of a situation where the TAAR is unlikely to apply would be where the group organises its funding to make a third-party acquisition in such a way that the interest receipts arose in a company with relevant brought forward relief to set against them. The economic value of the new company as an asset and its capacity to generate future profits for the group would be likely to more than off-set any tax benefit.

192. It is likely that any arrangements entered purely for regulatory reasons would represent an economic necessity, and unless there were steps taken, beyond what was required for regulatory reasons, in order to secure a tax advantage the TAAR would not apply.