HM Treasury

HM Revenue & Customs

Reforms to corporation tax loss relief:

consultation on delivery

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1 Introduction

Corporate tax policy

1.1 In 2010 the government set the objective of making the UK corporate tax regime the most competitive in the G20 and providing the right conditions for businesses to invest, innovate and grow.

1.2 To achieve this objective, the government has reduced the corporation tax rate from 28% to 20%, with further reductions to 17% in 2020, introduced a Patent Box, set a permanent level of £200,000 for the Annual Investment Allowance, reformed Controlled Foreign Company rules and increased the generosity of the Research and Development (R&D) tax credit schemes.

1.3 These reforms have helped drive the UK's economic recovery, and supported a significant increase in employment and business investment at the same time as strengthening the public finances.

1.4 The Business Tax Road Map published at the 2016 Budget sets out an updated strategy for business taxation over the life of the Parliament.

1.5 It reinforces the government's desire for a competitive and stable business tax regime, but also identifies three specific objectives and a comprehensive package of measures for delivering them:

- supporting small businesses and lower tax rates to drive growth: The government has announced a £6.7 billion reduction in the business rates burden and a further one percentage point reduction in the corporation tax rate from April 2020
- maintaining a level playing field through countering avoidance and aggressive tax planning: The government has announced new restrictions on the ability of businesses to use interest deductions, royalty payments, hybrids and offshore structures for developing UK property for tax planning purposes; and
- simplifying and modernising the tax system: The government has announced reforms to business energy taxation and Stamp Duty Land Tax on non-residential property transactions

1.6 It is in line with the modernisation programme in the third objective that the government has announced changes to the treatment of losses for corporation tax purposes.

Current rules on losses

1.7 When a company makes a loss from a particular activity, relief is available for that loss in calculating the taxable profit of that company, and in some cases its group members, for that accounting period.

1.8 The rules governing relief for a company's losses differ according to the nature of activities giving rise to them.

1.9 Where a company incurs a loss as a result of its trading activities it is able to:

- relieve that loss against total taxable profits generated in the corresponding accounting period, including profits from other activities
- relieve that loss against total profits generated in the previous accounting period

- surrender that loss to another company in the group where it can be relieved against taxable profits generated in the corresponding accounting period

1.10 The UK tax system allows losses that have not been relieved against current or prior year profits to be carried-forward and set off against taxable profits arising in future periods.

1.11 There is no restriction on the amount of profit that can be relieved by carried-forward losses, but there are restrictions on the type of profit that carried-forward losses can be relieved against.

1.12 Certain types of carried-forward losses can only be set against profits from the activities to which they relate, rather than the profits of other activities in a company or the profits of other companies within its group.

Proposed reforms

1.13 Enabling companies to claim relief for carried-forward losses from previous periods is an important feature of the corporate tax system, ensuring that the tax paid by a company is reflective of its profit over the long term.

1.14 However, the government believes that the existing rules around the carry forward of corporate losses are not consistent with international best practice, overly restrictive and not reflective of the way in which businesses operate.

1.15 The fact that relief for carried-forward losses is restricted to profits of the same company, and often to profits of the activities from which they have been derived, means that their value to a company can be arbitrary and dependent on particular group structures.

1.16 The absence of any restriction on the amount of taxable profit that can be relieved by carried-forward losses can also have undesirable outcomes for the Exchequer, in meaning that businesses making substantial UK profits may not pay any corporation tax due to losses incurred from historic activities.

1.17 The government announced two major reforms to the loss relief rules in the 2016 Budget in order to address this:

- losses arising from 1 April 2017 can be carried forward and set against the taxable profits of different activities within a company and the taxable profits of its group members
- the amount of annual profit that can be relieved by carried-forward losses will be limited to 50% from 1 April 2017, subject to an allowance of £5 million per group

1.18 Once introduced, these reforms will create a more modern loss relief regime in the UK, which is competitive with those in other G7 countries and is better aligned with how businesses operate. With over 99% of companies forecast to be unaffected by the restriction due to the availability of a £5 million allowance, these reforms will also provide for a more flexible regime for the majority of UK businesses.

Consultation

1.19 This consultation considers how best to deliver these reforms in legislation and how to deal with the interactions with other areas of the corporate tax system.

1.20 The consultation will run from 26 May 2016 to 18 August 2016. Draft legislation will then be published at Autumn Statement 2016, allowing for a period of technical consultation ahead of its inclusion in the 2017 Finance Bill.

How to respond

1.21 Please send responses by email to ct.lossreform@hmrc.gsi.gov.uk, or alternatively by post to:

Room 3/63

CT Losses, CTIS,

Her Majesty's Revenue and Customs
100 Parliament Street

London

SW1A 2BQ

2 Objectives of the reforms

2.1 This chapter sets out the government's objectives for the reforms being made to the loss relief regime and how it intends the new rules should work.

Objective 1: There is increased flexibility over the profits that future carried-forward losses can be relieved against

2.2 The government has announced that companies should have the ability to carry forward losses and set those losses against the taxable profits of different activities and the taxable profits of group members.

2.3 This will help to avoid relief for losses incurred from a particular source of income being stranded such that relief may be delayed or denied altogether due to a lack of profitability in that source of income.

2.4 This increased flexibility will have a significant impact on the Exchequer, both in terms of accelerating relief for companies' carried-forward losses and providing relief for losses that may otherwise have been unutilised.

2.5 For this reason, the government has announced that the increased flexibility will only be available for losses incurred from 1 April 2017. Losses that arise prior to this date will remain subject to the existing restrictions over profit that they can be set against.

Objective 2: The amount of profit that can be relieved by carried-forward losses is restricted to 50% from 1 April 2017

2.6 The current loss relief regime means that companies making substantial UK profits can end up not paying corporation tax for many years due to losses incurred from historic events and activities. Limiting the amount of profit that can be relieved with carried-forward losses will help to address that, in a way which is consistent with the approaches taken in a number of other G7 countries.

2.7 The restriction will not change the availability of relief for carried-forward losses, but will instead affect the timing of relief. Where a company's carried-forward losses are restricted, it will be able to carry forward any unused losses and set these against profit arising in future periods.

2.8 It is proposed that the restriction applies by reference to the profit against which carried-forward losses are eligible to be set. This means that relief for carried-forward trading losses arising before 1 April 2017 will be restricted to 50% of trading profit, whereas relief for carried-forward trading losses arising after 1 April 2017 will effectively be restricted to 50% of profit across the group.

2.9 The government does not believe that the restriction should, in isolation, have the effect of requiring groups to pay corporation tax in years of loss. It will therefore ensure that in-year losses can be surrendered against profit exposed by the restriction in a way that avoids this outcome arising.

2.10 The government intends for the restriction not to apply to the carry back of losses, given the importance of loss carry back in providing cash-flow support to businesses in periods of financial stress. This will also help to reduce the impact of the restriction where companies display short-term volatility in profit.

Objective 3: Groups using losses up to £5 million per annum should be unaffected by the restriction

2.11 The government wants to ensure that the restriction only impacts companies making substantial profits. It has therefore announced that the 50% restriction will only apply where more than £5 million of carried-forward losses are being used across a group of companies in a given year.

2.12 The government believes that this result can be achieved by allowing each group an annual allowance enabling up to £5 million of taxable profits to be relieved in full by carried-forward losses.

2.13 It is proposed that groups have full discretion over where the allowance is used within the group. The detailed design of the allowance in considered in Chapter 5.

Objective 4: There should continue to be a more restrictive treatment for banks' historic carried-forward losses

2.14 The amount of profit that banks can relieve with certain carried-forward losses arising before 1 April 2015 is already restricted to 50% under Chapter 3 of Part 7A of the Corporation Tax Act 2010. This is designed to reduce the impact on corporation tax receipts of carried-forward losses relating to the financial crisis and subsequent misconduct payments.

2.15 The government believes that the exceptional treatment of banks' pre-April 2015 carried-forward losses should be maintained in the context of the wider changes being made to the treatment of carried-forward losses. It has therefore announced that the amount of profit that banks can relieve with these losses will be restricted to 25% from 1 April 2016.

2.16 The government will consider how this exceptional restriction on banks' historic losses is integrated with the wider loss relief regime legislation being amended as part of this consultation. This is covered in Chapter 4.

Objective 5: Profits continue to be computed separately for different types of income, with the existing distinctions for capital losses maintained

2.17 Capital losses are ring-fenced for corporation tax purposes meaning that they can only be relieved against chargeable gains, even where a company has taxable profits from other income sources in the year that a capital loss arises.

2.18 This reflects the fact that companies have greater discretion over the point at which capital losses are recognised for tax purposes. It also reflects the bespoke regime for corporate chargeable gains, which includes an exemption for gains arising from the sale of substantial shareholdings and relief where business assets are replaced.

2.19 The government believes that the distinct treatment of capital losses remains appropriate and does not intent to change it as part of these reforms. These reforms will instead be confined to trading losses, non-trading loan relationship deficits, UK property losses, management expenses and non-trading losses on intangible fixed assets (i.e. revenue losses).

2.20 The government will also be maintaining the existing rules for computing corporation tax profits by categorising different types of income, sometimes referred to as the 'schedular system'.

2.21 It recognises that the categorisation of profits within the corporate tax system can be complex and inconsistent with how companies calculate and report profit for accounting purposes.

2.22 It also recognises that enabling companies to set carried-forward losses relating to one type of activity against the profits of another removes one of the principal constraints of the schedular system and one of the principal costs of its reform.

2.23 Nonetheless, the categorisation of company profits still has importance in restricting the treatment of carried-forward losses relating to periods prior to April 2017 and thus limiting the cost of reform.

2.24 The categorisation of profits is also relied upon in other areas of the corporate tax system such as Double Taxation Relief, Northern Ireland Corporation Tax and the Controlled Foreign Company rules.

2.25 The government does not therefore intend to make changes to the schedular system as part of these reforms and will instead be asking the Office of Tax Simplification (OTS) to explore the merits and practicality of reforms in this area as part of their project on the corporation tax computation. The Terms of Reference of that project will be published on the OTS's website[1].

[1] https://www.gov.uk/government/organisations/office-of-tax-simplification

3 Detailed proposal

3.1 This section sets out a proposed model for delivering the objectives set out in the previous chapter. The government welcomes views on this model and on whether any alternative proposals could achieve more effectively the aforementioned policy objectives.

Model

3.2 As set out above, the losses included in the reform are trading losses (including a company's share of a partnership trade loss), non-trading loan relationship deficits, management expenses, UK property losses and non-trading losses on intangible fixed assets.

3.3 In calculating the amount of these carried-forward losses a company can use for an accounting period it is envisaged that the following steps would be undertaken.

Step 1: Calculate the amount of profit to which the restriction applies

- Calculate the company's total profits for the accounting period excluding any restricted carried-forward losses[1].
- Divide the result into trading and non-trading profits.
- Calculate the trading and non-trading proportion. For example, if trading profits are £8 million out of total profits of £10 million, the trading proportion is four fifths, the non-trading proportion is one fifth.
- Calculate the amount of relief available against total profits. This includes all in-year losses (including group relief) but excludes restricted carried-forward losses, carried-back reliefs and any post-April 2017 carried-forward losses to be claimed from other group companies.
- Apply the reliefs to trading and non-trading profit in the proportion calculated.
- Allow up to £X million of profit to be relieved in full by available carried-forward losses, with X representing the amount of the £5 million group-level allowance that is allocated to the company. The group and company have full discretion in how this is allocated, e.g. the full allowance could be allocated to the trading profits of one particular company meaning that up to £5 million of carried-forward losses could be set against those profits in full.

Step 2: Allow up to 50% of remaining profit to be relieved by pre-April 2017 carried-forward losses subject to the existing streaming rules

- Allow up to 50% of the trading profit remaining after Step 1 to be relieved with available carried-forward trading losses and up to 50% of the non-trading profit remaining after Step 1 to be relieved with available non-trading loan relationship deficits. It is proposed that pre-April 2017 losses should be used in priority to post-April 2017 losses.

[1] The company does this by calculating its total profits as it would under section 4 (3) of the Corporation Tax Act 2010, but without including any carried-forward losses that are subject to the restriction. This means the company should use the amounts of profits, reliefs, deductions etc. for calculating this figure as it expects to use in its tax calculation.

- Certain losses are set against total profits rather than against particular types of income. In order to establish profits against which these losses can be set, add together trading and non-trading profits remaining after Step 1 to establish the company's 'Relevant Total Profits'.
- To the extent that losses already claimed at Step 2 fall below 50% of the Relevant Total Profits, allow remaining profit to be relieved by available management expenses, UK property losses and non-trading losses on intangible fixed assets that were unused during the previous accounting period. It is proposed that pre-April 2017 losses should be used in priority to post-April 2017 losses.

Step 3: Allow post-April 2017 losses to be relieved against the profits of different activities and/or different companies within the group

- If there are still Relevant Total Profits available that can be relieved within the 50% limit, allow this profit to be relieved by any remaining post-April 2017 carried-forward trading losses and non-trading loan relationship deficits within the company.
- If there are still Relevant Total Profits available that can be relieved within the 50% limit, allow this profit to be relieved by post-April 2017 carried-forward losses of any type that have been claimed from other companies in the group.
- If the company has relieved its Relevant Total Profits up to the 50% limit but there are remaining post-April 2017 carried-forward losses within the company, allow these losses to be surrendered to other group companies that have surplus capacity.

3.4 Worked examples of this calculation can be found at Annex A.

Additional considerations

3.5 Unlike group relief, it is proposed that carried-back losses are not taken into account in calculating the amount of profit to which the restriction applies. It is instead proposed that companies be able to carry back losses and set them against any taxable profits that remain after the restriction has been applied.

3.6 The government welcomes views on this. It also welcomes comments on the proposed ordering of reliefs within the calculation. The model proposes that post-April 2017 trading losses are set against trading profits first, with any remaining losses set against total profits. The government would like to know whether a similar approach should be taken to property losses i.e. property losses against property income before any remaining losses are set against total profits.

Questions

Q1. Will the proposed model be effective in delivering the objective of allowing businesses greater flexibility in the use of carried-forward losses?

Q2. Could the calculation be made simpler or more effective?

4 Detailed proposal for banks

Background

4.1 The amount of profit that banks can relieve with certain carried-forward losses is already restricted under Chapter 3 of Part 7A of the Corporation Tax Act 2010, with the level of the restriction changed from 50% to 25% at the 2016 Budget.

4.2 The restriction applies to banks' carried-forward trading losses, non-trading loan relationship deficits and management expenses accruing before 1 April 2015. This is subject to an exemption for losses incurred within the first five years of commencement of banking activity ('new entrant banks') and a cumulative allowance for building societies which allows up to £25 million of profit to be relieved by losses without a restriction applying.

Objective

4.3 The government believes that carried-forward losses within the scope of the existing bank loss restriction, linked to the financial crisis and subsequent misconduct payments, should continue to be distinguished going forward, with their relief limited to 25% of eligible profit.

4.4 The government also believes that carried-forward losses that fall outside of scope of the existing bank loss restriction should be treated in the same way as other industry losses, which means their relief will be limited to 50% of eligible profit over £5 million from 1 April 2017. This includes losses that are covered by the reliefs for building societies and new-entrant banks.

4.5 The government believes that it is possible to achieve these outcomes through modifications to the general model set out above, but welcomes views on this.

Proposed model

4.6 In calculating the amount of carried-forward losses a bank can use for an accounting period, it is envisaged that the steps below would be undertaken.

4.7 For the purposes of these steps, the term bank loss restriction (BLR) losses cover carried-forward trading losses, non-trading loan relationship deficits and management expenses relating to periods before 1 April 2015.

4.8 The term non-bank loss restriction (non-BLR) losses covers carried-forward trading losses, non-trading loan relationship deficits and management expenses relating to periods after 1 April 2015. It also covers UK property losses and non-trading losses on intangible fixed assets arising at any time.

Step 1: Calculate the amount of profit to which the restriction applies

- Calculate the company's total profits for the accounting period excluding any restricted carried-forward losses.
- Divide the result into trading and non-trading profits.

- Calculate the trading and non-trading proportion. For example, if trading profits are £8 million out of total profits of £10 million, the trading proportion is four fifths, the non-trading proportion is one fifth.

- Calculate the amount of relief available against total profits. This includes all in-year losses (including group relief), but excludes restricted carried-forward losses, carried-back reliefs and any post-April 2017 carried-forward losses to be claimed from other group companies.

- Apply the reliefs to trading and non-trading profit in the proportion calculated.

- Allow up to £X million of profit to be relieved in full by available non-BLR carried-forward losses, with X representing the amount of the £5 million group-level allowance that is allocated to the company.

Step 2: Allow up to 25% of remaining profit to be relieved by carried-forward BLR losses and up to 50% to be relieved by pre-April 2017 carried-forward non-BLR losses, subject to the existing streaming rules

- Allow up to 25% of the trading profit remaining after Step 1 to be relieved with available carried-forward BLR trading losses and up to 25% of the non-trading profit remaining after Step 1 to be relieved with available carried-forward BLR non-trading loan relationship deficits.

- Allow up to 50% of trading profit remaining after Step 1 to be relieved with available carried-forward non-BLR trading losses and up to 50% of the non-trading profit remaining after Step 1 to be relieved with available non-trading loan relationship deficits. It is proposed that pre-April 2017 losses should be used in priority to post-April 2017 losses. (The total losses used at Step 2 so far should not exceed 50% of the company's profits remaining after Step 1).

- Certain losses are set against total profits rather than against particular types of income. In order to establish profits against which these losses can be set, add together trading and non-trading profits remaining after Step 1 to establish the company's 'Relevant Total Profits'.

- To the extent that losses already claimed at Step 2 fall below 25% of Relevant Total Profits, allow any remaining profit to be relieved by available BLR management expenses.

- To the extent that losses already claimed at Step 2 fall below 50% of Relevant Total Profits, allow this profit to be relieved with available non-BLR management expenses, UK property losses and non-trading losses on intangible fixed assets that were unused during the previous accounting period. It is proposed that pre-April 2017 losses should be used in priority to post-April 2017 losses.

Step 3: Allow post-April 2017 losses to be relieved against the profits of different activities and/or different companies within the group

- If there are still Relevant Total Profits available that can be relieved within the 50% limit, allow this profit to be relieved by any remaining available post-April 2017 carried-forward trading losses and non-trading loan relationship deficits within the company.

- If there are still Relevant Total Profits available that can be relieved within the 50% limit, allow this profit to be relieved by post-April 2017 carried-forward losses of any type that have been claimed from other companies within the group.

- If the company has relieved its Relevant Total Profits up to the 50% limit but there are remaining post-April 2017 carried-forward losses within the company, allow these losses to be surrendered to other group companies that have surplus capacity.

Interaction with bank surcharge

4.9 The bank surcharge applies to the taxable profit of banking companies before the effect of losses surrendered from other companies within the group. This ensures that losses are relieved, at the rate of corporation tax applicable to the company in which they were incurred.

4.10 The government believes that the same principle should apply where losses incurred by non-banking companies from April 2017 are carried-forward and set against the profit of a banking company within the same group. It therefore proposes that the surcharge legislation be amended so that carried-forward losses received from a non-banking company are disregarded in the calculation of profit subject to the tax.

Questions

Q3. To what extent does this proposed model provide an effective means of applying the existing and proposed loss restriction rules to the banking sector?

Q4. Could the calculation be made simpler or more effective?

5 Detailed design points

Group definition for surrendering carried-forward losses

5.1 The models above allow carried-forward losses in one company to be set against the profits of another company within the same group, through a similar surrender and claims mechanism to group relief.

5.2 The government believes that the definition of a group for the purposes of surrendering and claiming carried-forward losses should be aligned with the definition of a group used for group relief purposes. The definition can be found at the link to the bottom of this page[1].

5.3 It is considered that this definition, which recognises group relationships on the basis of beneficial ownership, should be familiar and simple to apply. The government does not believe that it should create problems in the context of these reforms, but nonetheless welcomes views on this.

Allowance

5.4 The application of the allowance will be straightforward for standalone companies, which will be able to benefit from the allowance in its entirety. Where there are multiple companies within a group, it is intended that the allowance will be shared between those companies.

5.5 Companies that have access to the allowance will have full discretion in how this is allocated, e.g. the full allowance could be allocated to trading profit meaning that up to £5 million of trading profit can be reduced by carried-forward losses in full. For banking companies, this discretion is limited to non-BLR carried-forward losses.

5.6 It is proposed that the carried-forward losses that can be used under the allowance be determined by the rules on order of use, taking into account the amendments made at Steps 2 and 3 in the proposed model.

5.7 This means that:

- carried-forward trading losses should be used against trading profits, with priority given to pre-April 2017 trading losses
- carried-forward non-trading loan relationship deficits should be used against non-trading profits, with priority given to pre-April 2017 non-trading loan relationship deficits
- any remaining allowance can then be allocated to total profits, allowing management expenses, UK property losses and non-trading losses on intangible fixed assets to be relieved; it will also allow post-April 2017 trading losses and non-trading loan relationship deficits to be relieved against total profits e.g. where a company has post-April 2017 trading losses but only non-trading profits

Group definition for the purpose of the allowance

5.8 The government does not believe that the group relief definition is appropriate for the allowance, since not all companies under the same economic ownership will necessarily be

[1] https://www.gov.uk/hmrc-internal-manuals/company-taxation-manual/ctm80150

within a group relationship for group relief purposes. This could result in more than one £5 million allowance for the same economic group.

5.9 One option would be to base the group definition on the concept of control, with a group consisting of a parent company and any companies which it controls. Control could be defined by reference to International Financial Reporting Standard (IFRS) 10, with this definition then applied universally to include groups that don't report under IFRS or produce consolidated financial statements. It may be possible to have a bespoke definition of control within tax legislation but the government would need to understand the case for this.

5.10 Another option would be to base the definition of a group on 'association'. This could include companies under common control and also those in which another company has a major interest.

5.11 A definition based on control or association is considered to be robust against abuse, in preventing a group from fragmenting in a way that allows multiple allowances to be claimed across the companies within its control. The government welcomes views on these issues.

Consortia

5.12 The government would like to consider how the rules should apply to consortia.

5.13 A company is owned by a consortium if it is not a 75% subsidiary of any company, at least 75% of the company's ordinary share capital is beneficially owned by other companies and each of those companies (known as 'members of the consortium') beneficially owns at least 5%of the ordinary share capital. We will refer here to such a company as 'a consortium company'.

5.14 In the year that a consortium company makes a loss, that loss may be surrendered and claimed between members of the consortium and any companies in a group relief relationship with those members.

5.15 The government proposes to include consortium companies in the reform and allow post-April 2017 carried-forward losses to be surrendered to or claimed from members of the consortium.

5.16 It is proposed that:

- the amount of carried-forward losses that can be surrendered to a member of a consortium be determined by the amount of losses it was entitled to in the year the loss arose e.g. if a consortium company that made a loss of £2 million had two members, each with a 50% shareholding, up to £1 million of that loss could be surrendered to each of the members
- carried-forward losses be pooled according to the consortium member which could have claimed them in the year they arose
- in future accounting periods, if not useable by the consortium company, the carried-forward losses be available to surrender to the member of the consortium who was originally eligible for those losses
- if a consortium member disposes of its interest in the consortium company, the carried-forward losses no longer be available for surrender to a consortium member but continue to be available to the consortium company to relieve its own profits
- if carried-forward losses are surrendered to a member of the consortium, all members of the consortium need agree to the surrender

5.17 The government welcomes views on this proposed approach. It also welcomes views on how to deal with situations where the members of a consortium do not change but their share ownership increases or decreases.

Targeted anti-avoidance rules

5.18 The government wants to ensure that the reforms are robust against avoidance and abuse. This includes:

- companies accelerating the recognition of profits
- companies shifting profits into companies with carried-forward losses that arose before 1 April 2017 in order to circumvent the impact of the restriction
- companies entering into contrived arrangements in order to refresh carried-forward losses so that they benefit from the increased flexibility provided post 1 April 2017

5.19 The government has already introduced targeted anti-avoidance rules to deal with the tax-motivated refreshing of carried-forward losses i.e. situations where companies aim to give carried-forward losses the character of losses arising in a later period in order to allow them to be relieved more flexibly.

5.20 The government believes that these anti-avoidance rules remain effective and only intends to make a simple legislative change to ensure that UK property losses and non-trading losses on intangible fixed assets fall within their scope.

5.21 The government will however be exploring the case for a targeted anti-avoidance rule that protects against profit-shifting designed to accelerate carried-forward loss use e.g. a group artificially shifting profits from a company that has no carried-forward losses to a company that has pre-April 2017 carried-forward losses. It welcomes views on this and on how to ensure such a rule could be made proportionate and administrable.

Changes in ownership and trade cessation

Acquisitions

5.22 Carried-forward losses will continue to belong to the company in which they were incurred. This means that where a company is disposed of by a group, the group will no longer have access to that company's losses.

5.23 Consideration needs to be given as to how a company's losses are then treated upon a change in ownership.

5.24 When a company changes ownership, the existing tax rules restrict the use of losses where there has been a major change in the nature or conduct of a trade/business, or the trade/business has become small or negligible.

5.25 To protect against loss-buying (i.e. the acquisition of a company for its unused losses rather than the value of its trade or assets) the government believes that these restrictions should remain. This means that carried-forward losses would be restricted to the profits of the same trade/business upon acquisition, despite the greater freedoms being introduced around the use of carried-forward losses more generally.

5.26 The government welcomes views on this. It also welcomes views on the extent to which a group should be able to relieve its carried-forward losses against the profits of a company it acquires and how such flexibility could be safeguarded from abuse.

Cessation

5.27 The rules that trading and UK property losses expire when the trade or business ceases will remain.

5.28 Separately, the government intends to include a provision within the legislation which means that companies' carried-forward losses expire when there is no possibility of them being used going forward e.g. the company is going into liquidation. The government would like to understand any unintended or undesirable outcomes that such a provision could give rise to.

Interest restriction interaction

5.29 The government has announced there will be a restriction on the deductibility of corporate interest from 1 April 2017, consistent with the best practise framework of rules agreed as part of the G20/Organisation for Economic Co-operation and Development (OECD) Base Erosion and Profit Shifting (BEPS) project. It will apply where the net interest expense of a UK group exceeds 30% of taxable earnings before interest and depreciation (subject to other provisions to provide a higher level of deduction for highly-geared sectors where debt is used for commercial purposes).

5.30 The impact of the proposed interest restriction rules should be reflected in companies' taxable profits and thus taken into account in calculating the amount of carried-forward losses that can be used in a period.

5.31 The government will be considering the other potential interactions between these two reforms and how these interactions can be most effectively dealt with. It welcomes stakeholders' views on this.

Interaction with other areas of the tax system

5.32 The government will consider how the reforms apply to specialist areas of taxation, for instance the Patent Box and the creative industries relief. The government would welcome views on this and evidence of the impact inclusion in the loss reform would have for these and other specialist areas of taxation.

Questions

Q5. Is there any reason why the definition of a group for the surrender of carried-forward losses shouldn't be aligned with the existing group relief definition?

Q6. What definition of a group should be used for the purposes of applying the £5 million allowance?

Q7. How should the reforms be applied to consortia relationships?

Q8. How could the legislation be protected from abuse in a way that is simple and administrable for businesses?

Q9. Do you have any concerns regarding the government's proposed approach to loss-buying and trade cessation?

Q10. Are there other areas of the tax system with which these rules would have a significant impact? If so, what are these, and what might the consequences of that impact be?

6 Other considerations

Exclusions

6.1 The government does not intend the reforms to apply to carried-forward losses relating to ring-fenced oil and gas activity and excess Basic Life Assurance and General Annuity Business (BLAGAB) expenses, reflecting the specific tax regimes in place in these two sectors.

6.2 The government does not believe that there is strong enough evidence to justify an exemption for public-private partnership or private finance initiative projects from the restriction on the use of carried-forward losses, but nonetheless welcomes evidence of any impact it may have on these projects' economic viability.

Insurance

6.3 Carried-forward losses have significance for insurers that are subject to the regulatory capital requirements of Solvency 2.

6.4 Firstly, consideration is given to the value of carried-forward losses recognised on an insurer's Solvency 2 balance sheet, as a deferred tax asset, in calculating its regulatory capital resources[1].

6.5 Secondly, to the extent that they can be carried-forward and set against future taxable profits, consideration is given to the tax value of losses that would be generated in a stress event in calculating an insurer's regulatory capital requirement.

6.6 This means that the loss relief reforms could impact on insurers' regulatory capital ratios in two ways:

- the 50% limit on the amount of profit that can be relieved by carried-forward losses could necessitate an insurer to reduce the value of carried-forward losses recognised on its balance sheet as a deferred tax asset, potentially reducing the insurer's loss absorbing capital and thus reduce its capital ratio
- the 50% limit on the amount of profit that can be relieved by carried-forward losses could reduce the value assigned to tax losses incurred by an insurer in a stress event, potentially increasing the insurer's Solvency Capital Requirement and thus reduce its capital ratio

6.7 The government would like to understand the materiality of these impacts and the extent to which insurers will need to take mitigating action in order to ensure that regulatory capital requirements are adhered to.

6.8 It would also like to understand ways in which the impact on insurers' regulatory capital could be mitigated through the detailed design of the reforms, while noting the significant policy and legal challenges in making these detailed changes specific to the insurance sector.

[1] The value of carried-forward losses may be reflected in Tier 3 capital or Tier 1 capital depending on whether the insurer is in a net deferred tax asset or deferred tax liability position.

New Entrants

6.9 The government recognises the significance of loss relief for start-up companies which are liable to make losses when breaking into a market due to the costs associated with setting up new systems and establishing a brand and customer base.

6.10 However, it believes that the ability of groups to relieve £5 million of profit with carried-forward losses annually before any restriction applies means that the vast majority of start-up companies will be unaffected, and that any special provision would be difficult to justify from a policy and legal standpoint.

6.11 The government would welcome evidence of any cases where start-up companies' business plans would be materially impacted by the proposed restriction on carried-forward losses and views as to how this impact could be mitigated.

Questions

Q11. Do you have views on the government's proposed approach to oil and gas and life insurance companies?

Q12. What impact could the reforms have on public-private partnership or private finance initiative projects?

Q13. What other sectors or specialist areas of taxation need consideration as part of these reforms?

Q14. What will be the impact of the reforms on insurers' regulatory capital?

Q15. To what extent could the reforms impact on the business plans of new-entrant companies?

A Worked examples

Example 1: Standalone company with profits over £5 million

A.1 Company A has profits of £8 million. Of those, trading profits are £6 million and non-trading profits are £2 million. It has an in-year non-trading loan relationship deficit of £800,000.

A.2 The company has pre-April 2017 carried-forward trading losses of £10 million, a pre-April 2017 non-trading loan relationship deficit of £900,000 and a post-April 2017 property loss of £750,000.

Starting position

Company A	£ million
In-year results	
Trading profit (loss)	6
Non-trading profits	2
Non-trading loan relationship deficit	0.8
Carried-forward reliefs	
Pre-April 2017 trading losses	10
Pre-April 2017 non-trading loan relationship deficit	0.9
Post-April 2017 property loss	0.75

Company A

Step 1: Calculate the amount of profit to which the restriction applies

- The company's total profits for the accounting period, excluding any restricted carried-forward losses are £8 million.
- Trading profits are £6 million and non-trading profits are £2 million.
- The trading proportion is three quarters, the non-trading proportion is one quarter.
- The relief available against total profits is the £800,000 non-trading loan relationship deficit.
- Applying this proportionately:

  £600,000, three quarters of £800,000, of the in-year relief is applied to the trading profits.

  £200,000, one quarter of £800,000, of the in-year relief is applied the non-trading profits.

  Trading profits are £6 million minus £600,000, which equals £5.4 million.

  Non-trading profits are £2 million minus £200,000, which equals £1.8 million.
- The standalone company is entitled to the entire £5 million allowance. It decides to allocate this entirely to the trading profits, meaning it claims £5 million of carried-forward trading losses in full.

The non-trading profits of £1.8 million are not allocated any of the allowance.

Step 2: Allow up to 50% of the remaining profit to be relieved by carried-forward losses subject to the existing streaming rules

- Trading profits remaining after Step 1 are £400,000. Trading profits to be restricted of £400,000 at 50% is £200,000.

  The company can use a further £200,000 of its carried-forward trading losses from the total remaining carried-forward trading losses of £5 million.

  The non-trading profits remaining after Step 1 are £1.8 million. Non-trading profits to be restricted of £1.8 million at 50% is £900,000.

  The company can use its £900,000 carried-forward non-trading loan relationship deficits.

- Trading profits of £400,000 plus non-trading profits of £1.8 million give Relevant Total Profits of £2.2 million. 50% of this is £1.1 million.

  The company has used £200,000 of carried-forward trading losses and £900,000 of carried-forward non-trading loan relationship deficits, totalling £1.1 million.

  It has no capacity left within the 50% restriction to use further losses.

  The company has post-April 2017 losses but has used up its capacity under the restriction and is not in a group, therefore Step 3 is not carried out.

A.3 The company's profits remaining are £1.1 million. It will carry forward the remaining pre-April 2017 trading losses of £4.8 million and post-April 2017 property losses of £750,000, having used £5.2 million of its £10 million trading losses and the entire £900,000 of non-trading loan relationship deficits.

Ending position

Company A	Trading profits £ million	Non-trading profits £ million
Profits	6	2
In-year reliefs	(0.6)	(0.2)
Profits after in-year reliefs	5.4	1.8
Carried-forward losses used up to 100% using the allowance	(5)	-
Profits remaining after allowance	0.4	1.8
Carried-forward losses used up to 50%	(0.2)	(0.9)
Profits remaining after loss restriction calculation	0.2	0.9

Example 2: A loss-making group

A.4 Companies B and C are in a group.

A.5 Company B has profits of £15 million, of which trading profits are £10 million and non-trading profits are £5 million.

A.6 Company B has carried-forward losses of £17 million, of which £10 million are pre-April 2017 trading losses and £7 million are pre-April 2017 non-trading loan relationship deficits.

A.7 Company C made a trading loss of £22 million. It has no carried-forward losses. It surrenders £10 million losses to Company B as group relief.

Starting position

Company B	**£ million**
In-year results	
Trading profit (loss)	10
Non-trading profit (loss)	5
Carried-forward reliefs	
Pre-April 2017 trading losses	10
Pre-April 2017 non-trading loan relationship deficits	7
Company C	**£ million**
In year results	
Trading profit (loss)	(22)
Non-trading profit (loss)	-

Company B

Step 1: Calculate the amount of profit to which the restriction applies

- Company B's total profits for the accounting period, excluding any restricted carried-forward losses, are £15 million.
- Trading profits are £10 million and non-trading profits are £5 million.
- The trading proportion is two thirds; the non-trading proportion is one third.
- In-year relief against total profits is the group relief of £10 million claimed from Company C.
- Applying this proportionately:

  £6.67 million, two thirds of £10 million, of the in-year relief is applied to the trading profits.

  £3.33 million, one third of £10 million, of the in-year relief is applied to the non-trading profit.

  Trading profits remaining are £10 million minus £6.67 million, which equals £3.33 million.

  Non-trading profits remaining are £5 million minus £3.33 million, which equals £1.67 million.

- The group decides to allocate its entire allowance of £5 million to Company B. The company then chooses to allocate as follows:

  £3.33 million to trading profits, allowing pre-April 2017 trading losses to be set against trading profit in full.

  £1.67 million to non-trading profits, allowing pre-April 2017 non-trading loan relationship deficits to be set against non-trading profit in full.

  The company has reduced its profit to nil and does not therefore need carry out the additional steps.

A.8 Company B will carry forward the remaining pre-April 2017 trading losses of £6.67 million and pre-April 2017 non-trading loan relationship deficits of £5.33 million.

Company C

A.9 Company C is loss-making and has no carried-forward losses so does not need to carry out the loss restriction calculation.

A.10 Company C will carry forward the unused trading loss of £12 million. They will be post-April 2017 carried-forward losses.

Ending position

Company B	Trading profits £ million	Non-trading profits £ million
Profits	10	5
In-year reliefs	(6.67)	(3.33)
Profits after in-year reliefs	3.33	1.67
Carried-forward losses used up to 100% using the allowance	(3.33)	(1.67)
Profits remaining after the allowance	0	0

Example 3: Group with taxable profit up to £5 million

A.11 Companies D and E are in a group.

A.12 Company D has profits of £30 million, of which trading profits are £20 million and non-trading profits are £10 million. The company has carried-forward losses of £23 million, of which £15 million are pre-April 2017 trading losses and £8 million are pre-2017 non-trading loan relationship deficits.

A.13 Company E made a trading loss of £25 million. It has no carried-forward losses. It surrenders losses of £25 million to Company D as group relief.

Starting position

Company D	**£ million**
In-year results	
Trading profit (loss)	20
Non-trading profit (loss)	10
Carried-forward reliefs	
Pre-April 2017 trading losses	15
Pre-April 2017 non-trading loan relationship deficits	8
Company E	**£ million**
In year results	
Trading profit (loss)	(25)
Non-trading profit (loss)	-

Company D

Step 1: Calculate the amount of profit to which the restriction applies

- Company D's total profits for the accounting period, excluding any restricted carried-forward losses, are £30 million.
- Trading profits are £20 million and non-trading profits are £10 million.
- The trading proportion is two thirds; the non-trading proportion is one third.
- In-year relief against total profits is the group relief of £25 million claimed from Company E.
- Applying this proportionately:

  £16.67 million, two thirds of £25 million, of the in-year relief is applied to the trading profits.

  £8.33 million, one third of £25 million of the in-year relief is applied to the non-trading profits.

  Trading profits remaining are £20 million minus £16.67 million, which equals £3.33 million.

  Non-trading profits remaining are £10 million minus £8.33 million, which equals £1.67 million.

- The group decides to allocate its entire allowance of £5 million to Company B. The company then chooses to allocate as follows:

  £3.33 million to trading profits, allowing pre-April 2017 trading losses to be set against trading profit in full.

  £1.67 million to non-trading profits, allowing pre-April 2017 non-trading loan relationship deficits to be set against non-trading profit in full.

  The company has reduced its profits to nil and does not therefore need to carry out additional steps.

A.14 Company D will carry forward the remaining pre-April 2017 trading losses of £11.67 million and pre-April 2017 non-trading loan relationship deficits of £6.33 million.

Company E

A.15 Company E is loss-making and has no carried-forward losses so does not need to carry out the loss restriction calculation.

A.16 Company E's entire losses were used in year, so it has no losses to carry forward.

Ending position

Company D	Trading profits £ million	Non-trading profits £ million
Profits	20	10
In-year reliefs	(16.67)	(8.33)
Profits after in-year reliefs	3.33	1.67
Carried-forward losses used up to 100% using the allowance	(3.33)	(1.67)
Profits remaining after the allowance	0	0

Example 4: Group with taxable profit of more than £5 million and post-April 2017 carried-forward losses

A.17 Companies F, G and H are in a group.

A.18 Company F has profits of £25 million, of which trading profits are £20 million and non-trading profits are £5 million. It has post-April 2017 carried-forward trading losses of £15 million.

A.19 Company G made a trading loss of £10 million. It has no carried-forward losses. It surrenders losses of £4 million to Company F and £6 million to Company H as group relief.

A.20 Company H has non-trading profits of £6 million. It has post-April 2017 carried-forward management expenses of £7 million.

Starting position

Company F	**£ million**
In-year results	
Trading profit (loss)	20
Non-trading profit (loss)	5
Carried-forward reliefs	
Post-April 2017 trading losses	15
Company G	**£m**
In year results	
Trading profit (loss)	(10)
Company H	**£m**
In year results	
Non-trading profit (loss)	6
Carried-forward reliefs	
Post-April 2017 management expenses	7

Company F

Step 1: Calculate the amount of profit to which the restriction applies

- Company F's total profits for the accounting period, excluding any restricted carried-forward losses, are £25 million.
- Trading profits are £20 million and non-trading profits are £5 million.
- The trading proportion is fourth fifths; the non-trading proportion is one fifth.
- The in-year relief available against total profits is the group relief of £4 million claimed from Company G.
- Applying this proportionately:

  £3.2 million, four fifths of £4 million, of the in-year relief is applied to the trading profits.

£800,000, one fifth of £4 million, of the in-year relief is applied to the non-trading profit.

Trading profits remaining are £20 million minus £3.2 million, which equals £16.8 million.

Non-trading profits remaining are £5 million minus £800,000, which equals £4.2 million.

- The group decides to allocate the entire allowance of £5 million to Company F, the company then chooses to allocate as follows:

  £5 million to trading profits, allowing post-April 2017 trading losses to be offset against trading profit and reducing trading profits to £11.8 million.

  £0 to non-trading profits, meaning non-trading profits remain as £4.2 million.

Step 2: Allow up to 50% of remaining profit to be relieved by carried-forward losses subject to existing streaming rules

- Trading profits remaining are £11.8 million and non-trading profits remaining are £4.2 million.

  Trading profits of £11.8 million to be restricted at 50% is £5.9 million, non-trading profits of £4.2 million to be restricted at 50% is £2.1 million.

  The company can use a further £5.9 million of its remaining £10 million of post-April 2017 carried-forward losses against trading profits.

  There are no non-trading loan relationship deficits that the company could use against its non-trading profits of £4.2 million.

- Trading profits remaining after Step 1 of £11.8 million plus non-trading profits remaining after Step 1 of £4.2 million gives Relevant Total Profits of £16 million. 50% of Relevant Total Profits of £16 million is £8 million so that is the maximum figure of carried-forward losses that the company can use.

  The company has used £5.9 million of carried-forward losses and so has £2.1 million of remaining capacity. However, it has no management expenses, UK property losses or non-trading losses on intangible fixed assets that it can use.

Step 3: Allow post-April 2017 losses to be relieved against the profits of different activities and/or different companies within the group

- Company F has capacity of £2.1 million remaining and chooses to use £2.1 million of its post-April 2017 trading losses against total profits.

  The company has now relieved its Relevant Total Profits up to the 50% limit.

A.21 Company F has profits remaining of £8 million. It has used £13 million of its £15 million post-April 2017 carried-forward trading losses. It will carry forward £2 million of post-April 2017 trading losses to the following year.

Company G

A.22 Company G surrendered all of its £10 million in-year trading loss as group relief. It therefore has no losses to carry forward.

Company H

A.23 Company H claimed £10 million of group relief from Company G and so its profits are reduced to nil. It will therefore carry forward its £7 million of management expenses.

Ending position

Company F	Trading profits £ million	Non-trading profits £ million
Profits	20	5
In-year reliefs	(3.2)	(0.8)
Profits after in-year reliefs	16.8	4.2
Carried-forward losses used up to 100% using the allowance	(5)	-
Profits remaining after the allowance	11.8	4.2
Carried-forward losses used up to 50%	(5.9)	(2.1)
Profits remaining after loss restriction calculation	5.9	2.1

Example 5: Group with taxable profit more than £5 million and a mix of pre and post April 2017 carried-forward losses

A.24 Companies I, J and K are in a group.

A.25 Company I has profits of £25 million, of which trading profits are £20 million and non-trading profits are £5 million. It has carried-forward losses of £21 million, of which £10 million are pre-April 2017 trading losses, £6 million are post-April 2017 trading losses, £1 million are pre-April 2017 non-trading loan relationship deficits and £4 million are post-April 2017 non-trading loan relationships deficits.

A.26 Company J makes an in-year trading loss of £10 million. It surrenders this to Company I as group relief.

A.27 Company K has a non-trading profit of £6 million. It has carried-forward losses of £2.5 million, of which £1.5 million are pre-April 2017 property losses and £1 million are post-April 2017 property losses.

Starting position

Year ending 31 December 2022, Company I	**£ million**
In-year results	
Trading profit (loss)	20
Non-trading profit (loss)	5
Carried-forward reliefs	
Pre-April 2017 trading losses	10
Post-April 2017 trading losses	6
Pre-April 2017 non-trading loan relationship deficits	1
Post-April 2017 non-trading loan relationship deficits	4
Year ending 31 December 2022, Company J	**£ million**
In year results	
Trading profit (loss)	(10)
Year ending 31 December 2022, Company K	**£ million**
In year results	
Non-trading profit (loss)	6
Carried-forward reliefs	
Pre-April 2017 property losses	1.5
Post-April 2017 property losses	1

Company I

Step 1: Calculate the amount of profit to which the restriction applies

- Company I's total profits for the accounting period, excluding any restricted carried-forward losses, are £25 million.
- Trading profits are £20 million and non-trading profits are £5 million.

- The trading proportion is four fifths; the non-trading proportion is one fifth.
- The in-year relief available against total profits is the group relief of £10 million claimed from Company J.
- Applying this proportionately:

  £8 million, four fifths of £10 million, of the in-year relief is applied to the trading profits.

  £2 million, one fifth of £10 million, of the in-year relief is applied to the non-trading profit.

  Trading profits remaining are £20 million minus £8 million, which equals £12 million.

  Non-trading profits remaining are £5 million minus £2 million, which equals £3 million.

- The group decides to allocate the entire allowance of £5 million to Company I, the company then chooses to allocate as follows:

  £5 million to trading profits, allowing pre-April 2017 trading losses to be set against trading profit and reducing trading profits to £7 million.

  £0 to non-trading profits, meaning non-trading profits remain as £3 million.

Step 2: Allow up to 50% of remaining profit to be relieved by carried-forward losses subject to existing streaming rules

- Trading profits remaining are £7 million and non-trading profits remaining are £3 million.

  Trading profits of £7 million to be restricted at 50% is £3.5 million, non-trading profits of £3 million to be restricted at 50% is £1.5 million.

  The company can use a further £3.5 million of pre-April 2017 carried-forward trading losses against trading profits.

  The company can use £1 million of pre-April 2017 non-trading loan relationships and £500,000 of post-April 2017 non-trading loan relationship deficits against the non-trading profits.

  Trading profits remaining after Step 1 of £7 million plus non-trading profits remaining after Step 1 of £3 million gives Relevant Total Profits of £10 million. 50% of the Relevant Total Profits of £10 million after Step 1 is £5 million, so £5 million is the maximum figure of carried-forward losses that the company can use.

- The company has used the full £5 million of carried-forward losses within the restriction so cannot use any more.

Step 3: Allow post-April 2017 losses to be relieved against the profits of different activities and/or different companies within the group

- The company has no Relevant Total Profits that can be relieved within the 50% limit so this step does not apply.
- The company has £6 million of post-April 2017 trading losses carried-forward remaining and £3.5 million of post-April 2017 non-trading loan relationship deficits carried-forward remaining which it can surrender to a group company. Company K (we will see below) has capacity of £500,000 after using its own carried-forward losses as far as

possible and so Company I decides to surrender £500,000 of its post-April 2017 carried-forward trading losses to Company K.

A.28 Company I's profits remaining are £5 million. Company I will carry forward to the following year £10.5 million of losses, of which £1.5 million are pre-April 2017 trading losses, £5.5 million are post-April 2017 and £3.5 million are post-April 2017 non-trading loan relationship deficits.

Company J

A.29 Company J surrendered its in-year trading loss to Company I, it has no carried-forward reliefs or profits so does not carry out the loss restriction calculation.

Company K

Step 1: Calculate the amount of profit to which the restriction applies

- Company J's total profits for the accounting period, excluding any restricted carried-forward losses, are £6 million.
- The company has no in-year reliefs, is allocated none of the allowance and only one type of profits (non-trading) so the rest of Step 1 does not apply.

Step 2: Allow up to 50% of remaining profit to be relieved by carried-forward losses subject to existing streaming rules

- Non-trading profits of £6 million to be restricted at 50% is £3 million.

  Company K could use £3 million of carried-forward non-trading loan relationship deficits against its non-trading profits, but it has no such deficits available.
- Relevant Total Profits, which are made up entirely of non-trading profits, are £6 million. 50% of the Relevant Total Profits of £6 million is £3 million, so that is the maximum figure of carried-forward losses that the company can use.

  The company decides to use its £1.5 million pre-April 2017 property losses and £1 million post-April 2017 carried-forward property losses against its non-trading profits.

Step 3: Allow post-April 2017 losses to be relieved against the profits of different activities and/or different companies within the group

- The company has used carried-forward losses of £2.5 million out of its capacity of £3 million. But the company has no available post-April 2017 carried-forward trading losses or non-trading loan relationship deficits.

  The company has used losses of £2.5 million out of its capacity of £3 million. Company I, as we saw above, has post-April 2017 carried-forward trading losses available.

  Therefore Company I surrenders £500,000 of those losses to Company K.

  This reduces Company K's profits to £3 million.
- The company has no losses available to surrender to other group companies.

A.30 Company K's profits remaining are £3 million. It has no losses to carry forward.

Ending position

Company I	Trading profits £ million	Non-trading profits £ million
Profits	20	5
In-year reliefs	(8)	(2)
Profits after in-year reliefs	12	43
Carried-forward losses used up to 100% using the allowance	(5)	-
Profits remaining after the allowance	7	3
Carried-forward losses used up to 50%	(3.5)	(1.5)
Profits remaining after loss restriction calculation	3.5	1.5
Company K	**Trading profits £ million**	**Non-trading profits £ million**
Profits	-	6
In-year reliefs	-	-
Profits after in-year reliefs	-	6
Carried-forward losses used up to 100% using the allowance	-	-
Profits remaining after the allowance	-	6
Carried-forward losses used up to 50%	-	(3)
Profits remaining after loss restriction calculation	-	3

Example 6: Banking Group with pre and post - 2015 carried-forward losses

A.31 Companies X, Y and Z are in a group. Company X is a banking company, companies Y and Z are non-banking companies.

A.32 Company X is subject to the general loss restriction and the Bank Loss Restriction (BLR). It has profit in the year ending 31 December 2018 of £100 million, of which £80 million are trading profits and £20 million are non-trading profits.

A.33 Company X has £180 million of carried-forward losses, of which £30 million are pre-April 2015 BLR trading losses, £90 million are pre-April 2015 BLR non-trading loan relationship deficits, £20 million are non-BLR trading losses which arose in the period 1 April 2015 to 31 March 2017, £15 million are pre-17 UK property losses and £25 million of post-17 non-BLR trading losses.

A.34 Company Y made a trading loss of £20 million, it surrenders this to Company X as group relief.

A.35 Company Z made a profit of £40 million of which £15 million were trading profits and £25 million were non-trading profits. The company has £75 million of pre-April 2017 carried-forward trading losses.

Starting position

Company X	**£ million**
In-year results	
Trading profit (loss)	80
Non-trading profit (loss)	20
Carried-forward reliefs	
Pre-April 2015 trading losses	30
Pre-April 2015 non-trading loan relationship deficits	90
1/4/2015 – 31/3/17 trading losses	20
Pre-April 2017 UK property losses	15
Post-2017 trading losses	25
Company Y	**£ million**
In year results	
Trading profit (loss)	(20)
Company Z	**£ million**
In year results	
Trading profit (loss)	15
Non-trading profit (loss)	25
Carried-forward reliefs	
Pre-April 2017 trading losses	75

Company X

A.36 The company is a banking company so the modified loss restriction calculation model for banks applies.

Step 1: Calculate the amount of profit to which the restriction applies

- The company's total profits for the accounting period, excluding any restricted carried-forward losses are £100 million.
- Trading profits are £80 million and non-trading profits are £20 million.
- The trading proportion is four fifths; the non-trading proportion is one fifth.
- The in-year relief available against total profits is the group relief of £20 million claimed from Company Y.
- Applying this proportionately:

  £16 million, four fifths of £20 million, of the in-year relief is applied to the trading profits.

  £4 million, one fifth of £20 million, of the in-year relief is applied to the non-trading profit.

  Trading profits remaining are £80 million minus £16 million, which equals £64 million.

  Non-trading profits remaining are £20 million minus £4 million, which equals £16 million.

- The group decides to allocate the entire allowance of £5 million to Company X. The company then chooses to allocate it as follows:

  £5 million to trading profits, allowing carried-forward trading losses incurred in the period 1 April 2015 to 31 March 2017 to be set against trading profits and reducing trading profits to £59 million.

  £0 to non-trading profits, meaning non-trading profits remain at £16 million.

Step 2: Allow up to 25% of remaining profit to be relieved by carried-forward BLR losses and up to 50% to be relieved by carried-forward losses, subject to the existing streaming rules

- Trading profits remaining after Step 1 are £59 million and non-trading profits remaining after Step 1 are £16 million.

  Trading profits of £59 million to be restricted at 25% is £14.75 million and non-trading profits to be restricted of £16 million at 25% is £4 million.

  Company X can use £14.75 million of pre-April 2015 BLR carried-forward trading losses to set against trading profits.

  Company X can use £4 million of carried-forward BLR non-trading loan relationship deficits to set against non-trading profits.

- Trading profits of £59 million to be restricted at 50% is £29.5 million.

  Company X has already used £14.75 million of its 50% capacity and uses £14.75 million of pre-April 2017 non-BLR carried-forward trading losses against the remaining £14.75 million of trading profit.

Non-trading profits to be restricted of £16 million at 50% is £8 million. Company X has already used £4 million of its 50% capacity and has no carried-forward pre-2017 non-BLR non-trading loan relationship deficits to set against the remaining non-trading profits.

- Trading profits remaining after Step 1 of £59 million plus non-trading profits remaining after Step 1 of £16 million gives Relevant Total Profits of £75 million. Relevant Total Profits of £75 million to be restricted at 25% is £18.75 million. The company has used more than £18.75 million of losses and so has no remaining capacity at the 25% limit. In any case, it has no pre-2015 BLR management expenses that it could use at this point.

- Relevant Total Profits to be restricted of £75 million at 50% is £37.5 million.

  The company has used £33.5 million of this capacity and so has remaining capacity of £4 million and decides to use £4 million of pre-April 17 UK carried-forward property losses against these profits.

Step 3: Allow post-April 2017 losses to be relieved against the profits of different activities and/or different companies within the group

- After Step 2 Company X has already used the 50% limit of its Relevant Total Profits so this step does not apply.

- Company X has remaining post-April 2017 carried-forward trading losses of £25 million which it can surrender to any group company that has surplus capacity.

  Company Z (as we will see below) has capacity of £12.5 million remaining after the loss restriction calculation.

  Company X chooses to surrender £12.5 million of its post-April 2017 non-BLR trading losses to Company Z.

A.37 Company X's remaining profits are £37.5 million. The company will carry forward £15.25 million pre-April 2015 BLR trading losses, £86 million pre-April 2015 BLR non-trading loan relationship deficits, £250,000 non-BLR trading losses which arose in the period 1 April 2015 to 31 March 2017 and £11 million pre-April 2017 UK property losses and £12.5 million of post-April 17 non-BLR trading losses.

Company Y

A.38 Company Y made a trading loss of £20 million, which it surrendered to Company X as group relief. It has no profits or carried-forward losses so does not carry out the loss restriction calculation.

Company Z

A.39 The company is a non-banking company so the standard proposed loss restriction calculation applies.

Step 1: Calculate the amount of profit to which the restriction applies

- The company's total profits for the accounting period, excluding any restricted carried-forward losses are £40 million.

- Trading profits are £15 million and non-trading profits are £25 million.

- Company F has no in-year reliefs available and none of the allowance is allocated to it so the rest of Step 1 does not apply.

Step 2: Allow up to 50% of remaining profit to be relieved by carried-forward losses subject to the existing streaming rules

- Trading profits remaining after Step 1 are £15 million and non-trading profits remaining after Step 1 are £25 million.

  Trading profits of £15 million to be restricted at 50% is £7.5 million and non-trading profits of £25 million to be restricted at 50% is £12.5 million.

  Company F can use £7.5 million of its pre-April 2017 carried-forward trading losses against trading profits.

  There are no non-trading loan relationship deficits that the company could use against its non-trading profits of £25 million.

- Trading profits remaining after Step 1 of £15 million plus non-trading profits remaining after Step 1 of £25 million gives Relevant Trading Profits of £40 million. 50% of Relevant Total Profits of £40 million is £20 million so that is the maximum figure of carried-forward losses that the company can use.

- The company has used £7.5 million of carried-forward losses and so has £12.5 million of remaining capacity. It has no carried-forward management expenses, UK property losses or non-trading losses on intangible fixed assets that it can use.

Step 3: Allow post-April 2017 losses to be relieved against the profits of different activities and/or different companies within the group

- The company has capacity of £12.5 million but has no post-April 2017 carried-forward losses.

- The company has capacity of £12.5 million. Company X, as we saw above, has post-April 2017 carried-forward trading losses available. Therefore Company Z claims £12.5 million of those losses from Company X.

- The company has no losses available to surrender to other group companies.

A.40 Company Z's profits remaining are £20 million. The company will carry forward the remaining pre-April 2017 trading losses of £67.5 million.

Ending position

Company X	Trading profits £ million	Non-trading profits £ million
Profits	80	20
In-year reliefs	(16)	(4)
Profits after in-year reliefs	64	16
Carried-forward losses used up to 100% using the allowance	(5)	-
Profits remaining after the allowance	59	16
Carried-forward losses used up to 25%	(14.75)	(4)
Carried-forward losses used up to 50%	(14.75)	(4)
Profits remaining after loss restriction calculation	29.5	8

Company Z	Trading profits £ million	Non-trading profits £ million
Profits	15	25
In-year reliefs	-	-
Profits after in-year reliefs	15	25
Carried-forward losses used up to 100% using the allowance	-	-
Profits remaining after the allowance	15	25
Carried-forward losses used up to 50%	(7.5)	(12.5)
Profits remaining after loss restriction calculation	7.5	12.5

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