



HM Revenue
& Customs

Corporation tax: loss refresh prevention

Who is likely to be affected?

Companies in charge to UK corporation tax with carried forward reliefs who enter tax avoidance arrangements to access those reliefs in a new and more versatile form.

General description of the measure

This measure will prevent companies from obtaining a tax advantage by entering contrived arrangements to convert brought forward reliefs into more versatile in-year deductions.

The measure covers carried forward corporation tax trading losses, non-trading loan relationship deficits, and management expenses.

Where a company enters into arrangements meeting the conditions it will be unable to use these brought forward reliefs against profits created in the relevant company.

Policy objective

This measure protects the UK Exchequer by ensuring that businesses cannot use artificial and contrived arrangements to circumvent the corporation tax rules around the use of losses.

This measure supports the government's objectives to have a fair tax system for all and to tackle avoidance in the tax system. It levels the playing field between businesses that enter such arrangements to avoid tax and those who keep within the spirit of the law.

Background to the measure

This measure was announced at Budget 2015.

Detailed proposal

Operative date

This measure will have effect for corporation tax in the calculation of companies' taxable profits for accounting periods beginning on or after 18 March 2015.

Any profits of a company with an accounting period straddling 18 March 2015 will be allocated into notional periods falling before and after that date, and the rules will apply to the notional period commencing on 18 March 2015. The apportionment will be proportionate to time or on an otherwise just and reasonable basis.

The measure will apply to arrangements entered into before commencement where these give rise to profits after commencement.

Current law

UK corporation tax rules require companies to calculate a separate tax profit or loss for each of several activities. For example, trading activity is taxed under Part 3 of the Corporation Tax Act (CTA) 2009 (section 34), income of a property business is charged to tax under Part 4 of that Act (section 209), and loan relationships are charged to tax under Part 5 of that Act (section 299).

Where a loss arises in an activity, it can provide relief from tax either only against income of that activity or more generally against income from all activities; see for example the treatment of trading losses under sections 37 and 45 of CTA 2010.

Within the year that losses arise there is significant versatility in how a loss arising from one activity can be used against profits from another. Continuing the example above: a trade loss of the year may be claimed by the company against profits from any of its activities (see section 37 of CTA 2010) or may be claimed as group relief by other companies in the same group (under Part 5 of CTA 2010).

Where a loss cannot be used in a given year (because the group overall is loss making, so has no capacity to use all the losses), it is confined to the company that generated it and, in most cases, can only be used against future profits of the activity in which it arose (see section 45 of CTA 2010).

Proposed revisions

Legislation will be introduced in Finance Bill 2015 to create a new Part 14B of CTA 2010.

The conditions to be met for the new Part to apply will be:

- a company receives profits from which it can deduct any of the relevant carried forward reliefs, and it is reasonable to assume that the profit would not have arisen to that company but for the arrangement
- the company, or a company connected with it, is entitled to bring a deductible amount into account as a consequence of the arrangement
- the main purpose, or one of the main purposes, of entering the arrangement is to obtain a tax advantage involving both the deduction and the use of the carried forward reliefs

The rule will not apply unless the anticipated value of the tax advantage is the greater than any other expected economic value of the arrangement. This ensures that the measure will not restrict the availability of carried forward reliefs where the arrangement is predominantly commercial.

Where these conditions are met, the legislation will deny relief for:

- trading losses carried forward under section 45 of CTA 2010
- non-trading loan relationship deficits carried forward under section 457 of CTA 2009
- management expenses and qualifying charitable donations treated as management expenses carried forward under section 1223 of CTA 2009
- management expenses arising on the cessation of a property business under section 63 of CTA 2010

The new Part 14B will deny relief only against the profits arising from the arrangement.

The new deductible amount generated from the arrangement will be available according to normal rules.

The targeted anti-avoidance rule applying to arrangements involving banking companies in draft section 269M of Part 7A of CTA 2010 (restrictions on certain deductions made by banking companies) takes precedence over this rule. A draft of Part 7A was published at Autumn Statement 2014 and this will be introduced in Finance Bill 2015.

Summary of impacts

Exchequer impact (£m)	2015-16	2016-17	2017-18	2018-19	2019-20
	+95	+170	+170	+150	+130
	These figures are set out in Table 2.1 of Budget 2015 and have been certified by the Office for Budget Responsibility. More details can be found in the policy costings document published alongside Budget 2015.				
Economic impact	The measure is not expected to have any significant economic impacts.				
Impact on individuals, households and families	<p>This measure concerns incorporated businesses and has no direct impact on individuals or households.</p> <p>This measure concerns multinational groups of companies and is not expected to impact on family formation, stability or breakdown.</p>				
Equalities impacts	It is not expected that there will be an impact on groups with protected characteristics.				
Impact on business including civil society organisations	This measure will have no impact on business and civil society organisations who are undertaking normal commercial transactions; it will only impact on the small number of businesses that are using avoidance arrangements affected by this measure.				
Operational impact (£m) (HMRC or other)	This measure is not expected to have any significant operational impacts.				
Other impacts	<p><u>Small and micro business assessment</u>: this measure is expected to have no impact on compliant small and micro businesses.</p> <p>Other impacts have been considered and none have been identified.</p>				

Monitoring and evaluation

The measure will be subject to ongoing monitoring through receipts, information collected in tax returns and disclosure of new anti-avoidance schemes to circumvent the measure.

Further advice

If you have any questions about this change, please contact James Konya on 03000 544525 (email: james.konya@hmrc.gsi.gov.uk).

1 Tax avoidance involving carried-forward losses

Schedule 1 contains provision restricting the circumstances in which companies may make a deduction in respect of certain losses carried forward from previous accounting periods.

SCHEDULE 1

Section 1

TAX AVOIDANCE INVOLVING CARRIED-FORWARD LOSSES

PART 1

AMENDMENTS OF CTA 2010

1 In CTA 2010, after Part 14A insert –

“PART 14B

TAX AVOIDANCE INVOLVING CARRIED-FORWARD LOSSES

730E Overview

- (1) This Part makes provision restricting the circumstances in which a company may make a deduction in respect of a relevant carried-forward loss.
- (2) For the meaning of “relevant carried-forward loss”, see section 730F.

730F Meaning of “relevant carried-forward loss”

- (1) In this Part “relevant carried-forward loss” means any of the following –
 - (a) a carried-forward trading loss (see subsection (2)),
 - (b) a carried-forward non-trading deficit (see subsection (3)),
 - (c) any carried-forward management expenses (see subsection (4)).
- (2) “Carried-forward trading loss”, in relation to a company and an accounting period, means a loss in a trade of the company which is carried forward from a previous accounting period under section 45 (carry forward of trade loss against subsequent trade profits).
- (3) “Carried-forward non-trading deficit”, in relation to a company and an accounting period, means a non-trading deficit which the company has from its loan relationships under section 301(6) of CTA 2009 and which is carried forward from a previous accounting period under section 457 of that Act (carry forward of deficits to accounting periods after deficit period).
- (4) “Carried-forward management expenses”, in relation to a company and an accounting period, means –
 - (a) any amounts which –
 - (i) fall within subsection (2) of section 1223 of CTA 2009 (carrying forward expenses of management and other amounts), and

- (ii) are treated by subsection (3) of that section as expenses of management deductible for the period, and
- (b) any amounts which are treated by section 63(3) (carrying forward certain losses made by company with investment business which ceases to carry on UK property business) as expenses of management deductible for the period for the purposes of Chapter 2 of Part 16 of CTA 2009.

730G Disallowance of deductions for relevant carried-forward losses

- (1) This section applies if conditions A to E are met.
- (2) Condition A is that –
 - (a) for the purposes of corporation tax a company has profits (“relevant profits”) for an accounting period,
 - (b) the relevant profits arise to the company as a result of any arrangements (“the tax arrangements”), and
 - (c) in the absence of this section the company (“the relevant company”) would, for corporation tax purposes, be entitled to deduct from the relevant profits for the period an amount in respect of any relevant carried-forward losses.
- (3) Condition B is that –
 - (a) the relevant company, or a company connected with that company, brings a deductible amount into account as a deduction for an accounting period, and
 - (b) it is reasonable to assume that neither the company, nor any company connected with it, would have brought that amount into account as a deduction for that period but for the tax arrangements.
- (4) Condition C is that the main purpose, or one of the main purposes, of the tax arrangements is to secure a relevant corporation tax advantage –
 - (a) for the relevant company, or
 - (b) if there are any companies connected with that company, for the relevant company and those connected companies (taken together).
- (5) In this section “relevant corporation tax advantage” means a corporation tax advantage involving –
 - (a) the deductible amount mentioned in subsection (3), and
 - (b) the deduction of any relevant carried-forward losses from the relevant profits.
- (6) Condition D is that, at the time when the tax arrangements were entered into, it would have been reasonable to assume that the tax value of the tax arrangements would be greater than the non-tax value of the tax arrangements.
- (7) The “tax value” of the tax arrangements is the total value of –
 - (a) the relevant corporation tax advantage, and
 - (b) any other economic benefits derived by –
 - (i) the relevant company, or

- (ii) if there are any companies connected with that company, the relevant company and those connected companies (taken together),
as a result of securing the relevant corporation tax advantage.
- (8) The “non-tax value” of the tax arrangements is the total value of any economic benefits, other than those falling within subsection (7)(a) or (b), derived by –
 - (a) the relevant company, or
 - (b) if there are any companies connected with that company, the relevant company and those connected companies (taken together),
as a result of the tax arrangements.
- (9) Condition E is that the tax arrangements are not arrangements in relation to which section 269CK (banking companies: profits arising from tax arrangements to be disregarded) applies.
- (10) If this section applies, the relevant company is not entitled to deduct from the relevant profits any amount in respect of the relevant carried-forward losses.

730H Interpretation of section 730G

- (1) In section 730G –
 - “arrangements” includes any agreement, understanding, scheme, transaction or series of transactions (whether or not legally enforceable);
 - “corporation tax advantage” means –
 - (a) a relief from corporation tax or increased relief from corporation tax,
 - (b) a repayment of corporation tax or increased repayment of corporation tax,
 - (c) the avoidance or reduction of a charge to corporation tax or an assessment to corporation tax,
 - (d) the avoidance of a possible assessment to corporation tax, or
 - (e) the deferral of a payment of corporation tax or advancement of a repayment of corporation tax;
 - “deductible amount” means –
 - (a) an expense of a trade, other than an amount treated as such an expense by section 450(a) of CAA 2001 (research and development allowances treated as expenses in calculating profits of a trade),
 - (b) an expense of a UK property business or an overseas property business,
 - (c) an expense of management of a company’s investment business within the meaning of section 1219 of CTA 2009,
 - (d) a non-trading debit within the meaning of Parts 5 and 6 of CTA 2009 (loan relationships and derivative contracts) (see section 301(2) of that Act), or

- (e) a non-trading debit within the meaning of Part 8 of CTA 2009 (intangible fixed assets) (see section 746 of that Act),
 but does not include any amount that has been taken into account in determining RTWDV within the meaning of Chapter 16A of Part 2 of CAA 2001 (restrictions on allowance buying) (see section 212K of that Act);
 “relevant carried-forward loss” has the meaning given by section 730F.
- (2) References in section 730G to bringing an amount into account “as a deduction” in any period are to bringing it into account as a deduction in that period –
- (a) in calculating profits, losses or other amounts for corporation tax purposes, or
- (b) from profits or other amounts chargeable to corporation tax.”
- 2 In section 1 of CTA 2010 (overview of Act), in subsection (4), after paragraph (aa) insert –
- “(ab) carried-forward losses (see Part 14B),”.
- 3 In Schedule 4 to CTA 2010 (index of defined expressions), at the appropriate place insert –

“relevant carried- forward loss (in Part 14B) | section 730F”.

PART 2

COMMENCEMENT

- 4 (1) The amendments made by this Schedule have effect for the purposes of calculating the taxable total profits of companies for accounting periods beginning on or after 18 March 2015.
- (2) Sub-paragraph (3) applies where a company has an accounting period beginning before 18 March 2015 and ending on or after that date (“the straddling period”).
- (3) For the purposes of Part 14B of CTA 2010 –
- (a) so much of the straddling period as falls before 18 March 2015, and so much of that period as falls on or after that date, are treated as separate accounting periods, and
- (b) any amounts brought into account for the purposes of calculating the taxable total profits of the company for the straddling period are apportioned to the two separate accounting periods –
- (i) in accordance with section 1172 of CTA 2010 (time basis), or
- (ii) if that method would produce a result that is unjust or unreasonable, on a just and reasonable basis.

EXPLANATORY NOTE

TAX AVOIDANCE INVOLVING CARRIED-FORWARD LOSSES

SUMMARY

1. Clause [X] and Schedule [A] introduce an anti-avoidance rule to prevent companies from obtaining a corporation tax advantage by entering contrived arrangements to convert certain carried-forward reliefs into more versatile in-year deductions. The rule will apply to use of reliefs in accounting periods beginning on or after 18 March 2015, with apportionment of relief for accounting periods straddling that date.

DETAILS OF THE SCHEDULE

2. Clause [X] introduces Schedule [A], which is made up of two Parts:
- Part 1 inserts a new Part 14B into Corporation Tax Act (CTA) 2010; and
 - Part 2 concerns commencement and transitional rules.

Part 1: New Part 14B CTA 2010

3. Section 730E gives an overview of the new Part.
4. Section 730F defines a “relevant carried forward loss” for the purposes of the Part as any one of three types of corporation tax relief that has been carried forward to the company’s current accounting period. The reliefs included are:
- Trading losses carried forward under section 45 CTA 2010;
 - Non-trading deficits on loan relationships carried forward under section 457 CTA 2009; and
 - Management expenses carried forward under section 1223(2) of Corporation Tax Act (CTA) 2009 or amounts treated as management expenses by section 63(3) of CTA 2010.
5. Section 730G is the operative section within the Part, defining the situations to which the Part applies and what happens when it does.
6. This section relies on various definitions:
- “Relevant profits” are defined within subsection 730G(1) and are the profits arising from an arrangement;
 - “Tax arrangements” are defined within subsection 730G(1) and are the arrangements considered under the conditions;

- “Relevant company” is defined within subsection 730G(1) and is the company considered under the conditions;
- “Relevant carried forward losses” is defined in section 730F;
- “Connected” takes the meaning within section 1122 CTA 2010;
- “Deductible amount” is defined in section 730H;
- “Corporation tax advantage” is defined in section 730H;
- “Tax value” is defined in subsection 730G(7); and
- “Non-tax value” is defined in subsection 730G(8).

7. Subsections 730G(2) to (9) give five conditions, all of which must be met for the rule to apply.

8. Subsection 730G(2): Condition A is that because of the tax arrangements relevant profits arise to the company against which one or more relevant carried-forward losses would be available if the anti-avoidance rule did not apply.

9. Subsection 730G(3): Condition B is that because of the tax arrangements the relevant company or a company connected with it will bring a deductible amount into account.

10. Subsection 730G(4) and (5): Condition C is that the main purpose, or one of the main purposes, of the tax arrangements was to secure a corporation tax advantage for the company, or the company taken with any other connected companies, involving both the entitlement to the deductible amount and the use of relevant carried-forward losses.

11. Subsection 730G(6): Condition D is that it is reasonable to assume that when the tax arrangements were entered into the tax value of the arrangements was expected to be greater than the non-tax value. This an objective test to ensure that the rules will only apply to arrangements entered into predominantly for their tax value.

12. Subsection 730G(7): defines tax value as both the corporation tax advantage and any other economic benefits derived from the corporation tax advantage.

13. Subsection 730G(8): defines the non-tax value as any economic value derived from the arrangements apart from that falling in subsection 730G(7).

14. Subsection 730G(9): Condition E gives priority to the targeted anti-avoidance rule in Part 7A of CTA 2010 (Restrictions applying to certain deductions made by banking companies). Where section 269CK in that Part applies then this section will not.

15. Subsection 730G(10) defines the effect where all the conditions are met: the company will be unable to use relevant carried-forward losses against any relevant profits arising from the tax arrangements.

16. Subsection 730H(1) gives definitions for the Part.

17. Subsection 730H(2) clarifies that bringing a deduction into account in section 730G may be taken to mean that the deduction reduces a profit, relieves a profit, or increases a loss.

Part 2: Commencement for Part 14B

18. Where the conditions apply and use of relevant carried-forward amounts is restricted, this will take effect for accounting periods beginning on or after 18 March 2015.

19. Where the rules apply to a company with an accounting period straddling 18 March 2015, that period will be treated as two separate accounting periods for the purposes of this Part, and the restriction on relevant carried-forward amounts will apply in the split period treated as commencing 18 March 2015. The default is a split on a time basis, unless that basis is unjust or unreasonable.

20. This treatment will split any loss for the whole accounting period into a loss in the two periods, or any profit for the whole accounting period into a profit in the two periods.

21. The split operates at the level of amounts brought into account for the purposes of calculating the taxable total profits of the company. Hence if the restriction in subsection 730G(7) applies within a period straddling 18 March 2015:

- Where carried-forward losses or non-trading loan relationship deficits are restricted, the amount of total profits calculated in section 4(3) of CTA 2010 will be higher, increasing the amount of total profits against which relief can be given at Step 2 of section 4(2) in the calculation of taxable total profits; and
- Where management expenses are restricted, which are the first of all reliefs against total profits, the balance of total profits left available for relief at Step 2 of section 4(2) will be higher in the calculation of total profits; and
- These increased amounts will only be reflected in the period deemed to commence on 18 March 2015.

22. The split applies only so far as it is necessary for the purposes of this Part.

23. The Part makes no mention regarding when arrangements may have been entered into, so the rules will apply regardless of when this was.

BACKGROUND NOTE

24. This new Part was announced for the first time at Budget 2015.

25. The government has introduced this anti-avoidance rule to counteract the advantage for companies of entering into contrived arrangements to circumvent:

- The carry-forward rules for the relevant carried-forward reliefs, which limit the way in which relief can be given; and
- The group relief rules in Part 5 of CTA 2010, which only allow relief to be surrendered by a group company against profits arising in the same

overlapping period, and not the surrender of relief that has been carried-forward.

26. It is not intended to catch tax planning to make efficient use of relief available to companies within the group, and this is measured through the objective test in condition D in section 730G.