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

<table>
<tr><td rowspan="3">Exchequer impact (£m)</td><td>2015-16</td><td>2016-17</td><td>2017-18</td><td>2018-19</td><td>2019-20</td></tr>
<tr><td>+95</td><td>+170</td><td>+170</td><td>+150</td><td>+130</td></tr>
<tr><td colspan="5">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.</td></tr>
<tr><td>Economic impact</td><td colspan="5">The measure is not expected to have any significant economic impacts.</td></tr>
<tr><td>Impact on individuals, households and families</td><td colspan="5">This measure concerns incorporated businesses and has no direct impact on individuals or households.

This measure concerns multinational groups of companies and is not expected to impact on family formation, stability or breakdown.</td></tr>
<tr><td>Equalities impacts</td><td colspan="5">It is not expected that there will be an impact on groups with protected characteristics.</td></tr>
<tr><td>Impact on business including civil society organisations</td><td colspan="5">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.</td></tr>
<tr><td>Operational impact (£m) (HMRC or other)</td><td colspan="5">This measure is not expected to have any significant operational impacts.</td></tr>
<tr><td>Other impacts</td><td colspan="5"><u>Small and micro business assessment</u>: this measure is expected to have no impact on compliant small and micro businesses.

Other impacts have been considered and none have been identified.</td></tr>
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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).