HM Revenue
& Customs

Corporate Capital Loss Restriction: Consultation on delivery

Consultation document
Publication date: 29 October 2018
Closing date for comments: 25 January 2019

Subject of this consultation:	This consultation concerns company taxation, specifically the introduction of a restriction for carried-forward capital losses arising in a company to no more than 50% of the capital gains arising in an accounting period.
Scope of this consultation:	This consultation is to consider the method to be used to implement this restriction, specific exemptions from the restriction and to identify any unintended consequences.
Who should read this:	This consultation is aimed at companies or groups of companies with carried-forward losses in excess of £5 million, or those likely to be in this position in the future.
Duration:	This consultation will run for 12 weeks from 29 October 2018 to 25 January 2019.
Lead official:	This consultation is being led by James Mort of Her Majesty's Revenue & Customs.
How to respond or enquire about this consultation:	Responses to this consultation can be sent to Capital Loss Reform, Room 3/64, CT Capital Losses, BAI, HM Revenue & Customs, 100 Parliament Street, London, SW1A 2BQ or to reform.capitalloss@hmrc.gsi.gov.uk. Please contact John Pay, Consultation Coordinator, Budget Team, HM Revenue & Customs, 100 Parliament Street, London, SW1A 2BQ at hmrc-consultation.co-ordinator@hmrc.gsi.gov.uk for enquiries about the content or scope of the consultation or requests for hard copies.
Additional ways to be involved:	As this is concerned mainly with the technicalities of implementation and the impact is expected to affect only a small number of corporate groups this will be a mostly written exercise although we will consider requests for face to face meetings to discuss specific elements of this measure. This consultation is also available in large print or Braille on application to John Pay. This consultation can also be made available in the Welsh language, again on application to John Pay.
After the consultation:	The government currently intends to publish a response to this consultation alongside draft legislation in summer 2019 and implement the reform from 1 April 2020.
Getting to this stage:	Corporate losses were reformed in 2017. Those reforms did not include capital losses. This measure will extend that reform to include a restriction for capital losses.
Previous engagement:	The government consulted on the introduction of corporate loss reforms in 2017 so, insofar as this measure will overlap with that loss restriction, the government will take into account the results of that consultation.

Contents

On request this document can be produced in Welsh and alternate formats including large print, audio and Braille formats

Executive summary

At Budget 2018, the Chancellor announced the government's intention to reform the rules for the relief of corporate capital losses from 1 April 2020. This will extend the corporate income loss restriction introduced in April 2017 to include carried-forward capital losses and help to create a more modern loss relief regime in the UK. Companies making capital gains will only be able to use carried-forward capital losses to offset up to 50% of those gains.

To ensure that the restriction only impacts on companies making substantial gains, we propose to extend the allowance of £5 million (provided for the corporate income loss restriction) to capital losses as well. This will ensure that over 99% of companies remain financially unaffected by both restrictions.

The consultation document contains details of actions the government considers are necessary to ensure that the reforms to capital losses are robust against tax avoidance. These include an anti-forestalling measure that will have retrospective effect from the date this measure was announced at Budget 2018. The details are contained in Chapter 4.

This consultation is aimed at companies likely to be affected by this measure, their advisers and trade bodies, from whom government would welcome their views on the detailed proposals for introducing this reform and its impacts.

These changes will impact companies with carried-forward capital losses so this consultation is not likely to be relevant to companies or groups of companies without such losses unless they consider that they may make significant capital losses in the future that would be carried forward to future accounting periods.

In addition to the general restriction, specific proposals are made in respect of companies with Basic Life Assurance & General Annuity Business (BLAGAB) and Oil & Gas companies.

Detailed questions can be found in Chapters 3 to 7 of this consultation; these are listed in Chapter 8.

A summary of responses and draft legislation taking account of them will be published in 2019. The reforms will take effect from 1 April 2020.

1. Introduction

Corporate tax policy

1.1. The government is committed to 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 delivered major cuts to the Corporation Tax rate from 28% to 19%, with a further reduction to 17% from 2020 legislated for, introduced a Patent Box, set a permanent level of £200,000 for the Annual Investment Allowance, reformed Controlled Foreign Company rules, increased the generosity of the Research and Development (R&D) tax credit schemes and significantly reformed corporate income losses.

1.3. The UK's corporate tax regime remains highly competitive; at 19% we have the lowest overall Corporation Tax rate in the G20.

1.4. We have also reformed and expanded the Substantial Shareholdings Exemption which exempts from the charge to tax gains or losses accruing on the disposal by companies of shares where certain conditions are met.

1.5. In the 2016 Business Tax Road Map, the government outlined its commitment to low business taxes and ensuring that these taxes were paid.

1.6. We set out a package of reforms to corporate loss relief in order to modernise one of the most outdated elements of the tax regime and ensure that companies pay tax when they make substantial annual profits.

1.7. It is in light of this that the government has announced changes to the treatment of capital losses for Corporation Tax purposes in Budget 2018.

1.8. This will mean that large companies pay tax when they make substantial capital gains.

Current rules for capital losses

1.9. Capital Gains Tax was introduced in Finance Act 1965 alongside the introduction of Corporation Tax.

1.10. Companies are not charged Capital Gains Tax, rather they are chargeable to Corporation Tax on their total profits which include chargeable gains.

1.11. The Taxation of Chargeable Gains Act 1992 (TCGA) sets out the rules for calculating chargeable gains and allowable losses. There are some differences between those for companies and those for individuals who are chargeable to Capital Gains Tax.

1.12. Capital losses arising to a company in an accounting period are set against any capital gains arising in the same period.

1.13. When capital gains exceed capital losses in an accounting period, the company will have chargeable gains that are subject to Corporation Tax.

1.14. The UK tax system allows remaining capital losses to be carried forward and set against capital gains arising in future years indefinitely.

1.15. Companies within a group for capital gains purposes can elect to transfer gains or losses arising in an accounting period to another company within that group.

Reforms to Corporation Tax loss relief

1.16. The government introduced a major reform of Corporation Tax income losses from 1 April 2017. The effect of this is that:-

a. losses arising from 1 April 2017 can in most cases be carried forward and set against the total profits of a company or another company within the same group.

b. from 1 April 2017, the amount of profit that can be relieved by carried-forward losses is limited to 50%, subject to an annual deductions allowance of £5 million per group.

1.17. The reform affects many types of losses, such as trading losses and some non-trading losses but did not reform capital losses. For the purpose of this consultation, the 2017 loss restriction will be referred to as the Corporate Income Loss Restriction (CILR).

Proposed reforms

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

1.19. However, the government believes that the existing rules for capital losses are not consistent with the recent reforms of other corporate losses and that there is a case for alignment. In particular the CILR rules benefit capital gains by allowing certain carried-forward income losses to be set off against capital gains.

1.20. The rules for capital losses already ensure a form of group relief for carried-forward losses and allow carried-forward capital losses to be set against any kind of gains. There is therefore no need to provide the relaxations given under CILR as these are already available.

1.21. The absence of any restriction on the amount of capital gains that can be relieved by carried-forward capital losses can also have undesirable outcomes for the Exchequer, as businesses making substantial capital gains over many years may not pay any Corporation Tax due to losses incurred from historic disposals.

1.22. The government now proposes a major reform of corporate capital losses in order to address this so that:-

a. the amount of capital gains that can be relieved by carried-forward capital losses will be limited to 50% from 1 April 2020.

b. the allowance of £5 million per group that was introduced for CILR will also cover capital gains that can be offset with carried-forward capital losses.

1.23. Once introduced, these reforms will bring the treatment of capital losses closer to other corporate losses and thus create a more modern loss relief regime in the UK. Over 99% of companies are forecast to be financially unaffected by the restriction due to the availability of a £5 million annual allowance.

Consultation

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

1.25. The consultation will run from 29 October 2018 to 25 January 2019. Draft legislation will then be published in summer 2019, allowing a period of technical consultation ahead of its inclusion in the 2020 Finance Bill.

Content

1.26. Chapter 2 sets out the objectives of the corporate capital loss restriction.

1.27. Chapter 3 sets out detail of how the restriction might be calculated.

1.28. Chapter 4 considers anti-avoidance provisions, anti-forestalling provisions together with examples and transitional arrangements.

1.29. Chapter 5 details how the restriction might apply to companies with Basic Life Assurance and General Annuity Business (BLAGAB).

1.30. Chapter 6 considers other impacts of the restriction.

1.31. Chapter 7 details the impacts of this measure on affected companies.

1.32. Chapter 8 contains a summary of the questions asked in Chapters 3 to 7.

1.33. Chapter 9 sets out how the consultation process works and what the next steps for this measure will be.

1.34. Annex A contains examples of the calculation of the loss restriction.

1.35. Annex B contains examples of the transitional arrangements.

How to respond

1.36. Please send responses by email to reform.capitalloss@hmrc.gsi.gov.uk, or alternatively by post to:

Capital Loss Reform
Room 3/64
CT Capital Losses, BAI
Her Majesty's Revenue & Customs
100 Parliament Street
London
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2. Objectives of the reform

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

Objective 1: The amount of capital gains that can be relieved by carried-forward losses is restricted to 50% from 1 April 2020

2.2. The current corporate loss relief regime means that companies making substantial capital gains may not pay Corporation Tax on such gains for many years due to capital losses incurred from historic events and activities.

2.3. Since significant amounts of carried-forward capital losses can pre-date other important reforms to the corporate capital gains regime, such as the Substantial Shareholding Exemption, the introduction of the Intangible Fixed Asset regime and Real Estate Investment Trusts, or the various Targeted Anti-Avoidance Rules, there is a good case for modernising how relief is given for those historic losses.

2.4. The government considers that limiting the amount of capital gains that can be relieved with carried-forward capital losses will help to address this in a way which is consistent with the CILR.

2.5. Where a company’s carried-forward capital losses are restricted, it will still be able to carry forward any unused capital losses and set these against capital gains arising in future periods.

2.6. The relief for carried-forward capital losses will be restricted to 50% of capital gains. Where an election to transfer capital gains between group companies is made in order to access the carried-forward capital losses in that second company, the 50% restriction will apply to the amount of capital gains transferred under that election.

2.7. The government does not believe that the restriction should, in isolation, have the effect of requiring groups to pay Corporation Tax in years where capital losses exceed capital gains. It will therefore continue to ensure that in-year capital losses are offset in full against capital gains before any restriction is applied.

Objective 2: Groups using carried-forward losses (both income and capital losses) of less than £5 million per annum should not have to pay additional tax as a result of this restriction

2.8. The government wants to ensure that the restriction only impacts companies making substantial capital gains and/or profits. It therefore considers that the 50% restriction will only apply where there are profits and gains of more than £5 million in a stand-alone company or across a group of companies in a given year.

2.9. The CILR allows each group an annual allowance of £5 million (known as the "deductions allowance") which enables up to that amount of taxable profits to be relieved in full by carried-forward losses.

2.10. The government does not believe that there should be a separate allowance for capital losses as a suitable single allowance can ensure that 99% of companies will not pay additional tax as a result of this reform.

2.11. It is therefore proposed that a single £5 million deductions allowance will be available across a group which covers both capital losses and the other losses included in the CILR. With this extension to capital losses, it will remain the case that 99% of companies are financially unaffected.

2.12. It is further proposed that groups have full discretion over where the deductions allowance is used within the group and whether that allowance is used against capital gains, other profits or a combination of both. The detail of how the restriction might work and how it might interact with the CILR is considered in Chapter 3.

Objective 3: The policy should only impact corporate entities. Individuals will not be affected

2.13. The government intends that the restriction will only affect companies. Individuals who make capital gains will not be affected by this measure.

2.14. Life assurance companies hold assets that back life insurance policies held by individuals; this is known as Basic Life Assurance and General Annuity Business (BLAGAB). Whilst such companies are within the scope of Corporation Tax, the share of the profits (including capital gains) that is allocated to the policyholders for certain life insurance policies are taxed at the basic rate of income tax.

2.15. The government does not intend for individuals to be impacted by this reform, so proposes to exclude the policyholders' share of BLAGAB gains from the scope of this reform. This is because any such gains arising directly to those individuals would not be subject to any restriction for carried-forward losses.

2.16. Chapter 5 sets out more detail on this objective.

Objective 4: Oil and Gas companies who make ring-fenced gains will not be subject to this restriction on those gains

2.17. A ring-fenced tax regime[1] applies to profits (including capital gains) which arise in the UK extraction activities of oil and gas companies.

2.18. Rates of Corporation Tax charged on ring-fence profits have typically been significantly higher than the rate charged on profits of other companies.

2.19. The ring fence ensures that only losses within the regime are set against gains arising with the regime. The CILR does not apply to income losses within this special regime.

2.20. The government does not propose restricting capital losses within the ring-fence.

2.21. Chapter 6 sets out more detail on this objective.

[1] As set out in Section 197 TCGA.

3. Proposed approach

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

Model

3.2. It is intended to mirror as far as possible the model used in the 2017 loss reform to calculate the restriction which should be applied against capital gains. Therefore aspects such as definitions of groups and the methodology for the allocation of deductions allowance between group members will follow the CILR model.

3.3. The government considers that it is preferable to avoid making significant changes to the CILR computation, so the capital loss restriction will be calculated through a separate calculation after the CILR.

3.4. Steps 1 to 5 below show how this might be done.

Step 1: Allocate the £5 million group deductions allowance

3.5. The group would be free to decide how much of the £5 million deductions allowance would be allocated to the capital loss restriction.

Step 2: Perform the CILR computation

3.6. The group would then calculate the amount of loss restriction required for each company under the existing CILR rules. The deductions allowance used in those calculations is limited to the amount not allocated to the capital loss restriction.

Step 3: Allocate the deductions allowance to net capital gains

3.7. The company would calculate the net chargeable gains of the period against which carried-forward losses may be set. This is simply the net gains of the year after taking into account all in-year reliefs, including group relief and the effect of elections to transfer gains and losses within a group[2]. Any in-year reliefs already taken into account in the CILR computations would be ignored.

3.8. The company can choose how much relief is allocated to these net gains and how much is allocated to the CILR computation. The amount of relief allocated in the CILR computation should not reduce the company's relevant profits below zero.

[2] Elections made under Section 171A TCGA.

3.9. The company would then deduct any amount of net chargeable gains that were taken into account in the CILR computation at Step 2.

3.10. The remaining amount of gains that can then be relieved in full by carried-forward losses is the amount of the deductions allowance that is allocated to the company's chargeable gains under Step 1.

Step 4: Calculate the maximum amount of carried-forward losses that can be set against gains

3.11. 50% of the amount of capital gains remaining after the last step plus the allocated deductions allowance may be relieved by carried-forward losses (if sufficient are available).

Step 5: Allocate carried-forward losses against capital gains

3.12. The company can choose which type of carried-forward losses are set against the amount of gains calculated at Step 4.

3.13. The company's profits chargeable to Corporation Tax can now be computed in the normal way.

3.14. Examples of calculations that take account of restrictions for capital losses and CILR can be found at Annex A.

Questions

Q1. Will the proposed model be effective in achieving the objective of allowing companies flexibility in allocation of the £5 million deductions allowance whilst making minimal changes to the CILR?

Q2. Could the computation process be made simpler?

Q3. Are there any specific issues relating to capital gains and losses that should be taken into account to ensure fairness in achieving the government objectives?

Q4. What could be done to reduce the administrative requirements of this restriction?

4. Anti-avoidance, commencement and transitional rules

Targeted anti-avoidance rules

4.1. The government wants to ensure that this reform is robust against avoidance or abuse. This chapter contains details of actions the government considers are necessary to ensure that the reforms to capital losses are robust against aggressive tax planning or avoidance. These include an anti-forestalling measure that will have retrospective effect to the date this measure was announced at Budget 2018.

4.2. The government has identified three main scenarios which could be used to frustrate the effect of this loss restriction. These are:-

a. Delaying the realisation of a capital loss so that it will not accrue until a later accounting period.

b. Making arrangements that will enable an existing capital loss to be refreshed after this reform comes into force thus converting a carried-forward capital loss into an in-year capital loss which would not be subject to the loss restriction.

c. Ensuring that any capital gains are recognised before the loss restriction comes into force. Entering into arrangements to mitigate the effect of a future change in legislation is known as “forestalling”.

4.3. In the first two scenarios, any tax advantage obtained because the loss restriction has been avoided could only be realised after the commencement of the new rules, even though the relevant arrangements could be entered into prior to that date.

4.4. The government intends to include relevant anti-avoidance rules to negate any tax advantage from arrangements entered into before the introduction of the restriction but which give rise to such a tax advantage after.

4.5. A Targeted Anti-Avoidance Rule will counter arrangements that seek to exploit the deductions allowance going forward, such as where there is manipulation of a group structure to maximise the amount of the annual allowance due. These will be in line with the CILR targeted anti-avoidance rules and will apply to arrangements with a main purpose of obtaining a relevant tax advantage.

Anti-forestalling rule

4.6. In the third scenario described at 4.2.c above, a company (possibly within a group) could either make a disposal or set a time of disposal such that a capital gain on an asset will artificially accrue before this loss restriction comes into force. This may involve the use of losses that are already carried-forward or the use of current period losses that would be restricted as being carried-forward under this reform.

4.7. Clearly companies may dispose of assets within the period between the consultation being announced and 1 April 2020, and the government does not intend that capital gains arising under normal commercial practice during this period will be subject to an anti-avoidance rule

4.8. However, where arrangements are contrived specifically to avoid the effect of a loss-restriction, it is right to deny any tax advantage claimed after the changes have been announced, but before they come into force. The government therefore intends to include an anti-forestalling rule in the legislation to eliminate such tax advantages.

4.9. Below are examples to demonstrate when such a rule might apply under the third scenario described above. These examples assume that the company/group has capital losses that are already carried-forward or arise in the same period as the disposal that results in a capital gain.

Example 1

A company sells a property asset to an unconnected third party.

The anti-forestalling rule would not apply to a straightforward commercial disposal.

The rule would be expected to apply to the following examples.

Example 2

A company disposes of an asset (or is treated as having disposed of an asset for tax purposes) and subsequently re-acquires the same asset, or an equivalent asset, before the commencement of the new rules.

This “bed and breakfast” arrangement may involve a third party or, particularly in the case of shares, an open market.

This would result in a gain being realised, covered by carried-forward losses or current period losses, and the reacquired asset having a higher acquisition value.

Where a company disposes of an asset and leases it back under a normal commercial transaction, to realise value from the asset whilst still being able to use it, then this would not be caught.

Example 3

A company enters into a contract with another party to sell an asset, but the contract is not completed for some time.

This is an example where the contract will set the date of disposal (by virtue of Section 28 TCGA) but no commercial disposal will occur until the contract is completed. This could be several years later.

If there is no commercial reason for the delay in completion of the contract then this example would be expected to be caught be the anti-forestalling rules.

Example 4

A company owning an asset may dispose of it to an entity that is not part of the same group for capital gains purposes but effectively part of the same commercial concern, perhaps a Company Limited by Guarantee (CLG), before the new restriction comes into force. Carried-forward or current period capital losses are used to cover any gains and the base cost is effectively uplifted to current market value.

Indicators that the arrangements may be contrived to achieve a relevant tax advantage might be that the disposal is to a connected person (within the meaning of Section 286 TCGA) or where there is some common control of the company and the acquiring entity.

Example 5

Building on the previous example, the company owning an asset may enter into an unconditional contract with an entity that is not part of the same group for capital gains purposes, again a CLG might be used, to sell the asset before the new restriction comes into force. However, the contract is only completed at such a time as a third party wishes to purchase the asset, in which case the sale will be made by the CLG.

The disposal to the CLG is treated as taking place at the time of the contract under section 28 TCGA, so before the commencement of the loss restriction.

The original contract could be with a genuine third party, but one that receives a fee for its participation in the arrangement, rather than having a commercial interest in the asset concerned.

The above examples show the sorts of transactions that the government intends to be caught by the anti-forestalling rules. Where, had the arrangements not been made, a gain or a larger gain would arise with the use of past losses restricted under this reform, the restriction will be treated as having applied.

The government intends for transactions that would not have taken place but for this reform to be caught by an anti-forestalling rule.

A genuine commercial transaction may contain additional arrangements which serve no commercial purpose but which result in a pre-loss restriction gain arising; any such gain as arose from those additional arrangements would generally be regarded as satisfying a main purpose test, and the anti-forestalling rules should apply.

Commencement and transitional arrangements

4.10. The government intends that the reforms to capital losses will apply to capital gains that arise on or after 1 April 2020 such that the restriction will apply to losses carried-forward from the last accounting period ending before that date.

4.11. Where a company has an accounting period that straddles 1 April 2020 then transitional arrangements will apply.

4.12. In such cases, it is proposed that the accounting period be split into two notional accounting periods, one ended on 31 March 2020, the other commencing 1 April 2020. The restriction will apply only to gains arising in the notional period from 1 April 2020.

4.13. Companies are chargeable to Corporation Tax on the net amount of gains and losses arising in an accounting period less losses carried-forward from earlier periods.

4.14. The net amount of gains will need to be established for each notional period. Net gains arising in the notional period ended 31 March 2020 can be offset by carried-forward capital losses without restriction; net gains arising in the notional period commencing on 1 April 2020 will be subject to the restriction.

4.15. Where there is a surplus of capital losses arising in the notional period ended 31 March 2020, these are set against capital gains of the later notional period in arriving at the net gains in that period before the restriction is applied.

4.16. Annex B contains an example of how the transitional arrangement might work.

Q5. Will the proposed transitional arrangements be effective in the introduction of the capital loss restriction?

Q6. Are there any issues that should be taken into account in the transitional arrangements?

5. Proposals for life assurance companies

5.1. This chapter is only relevant for companies with Basic Life Assurance and General Annuity Business.

5.2. It sets out the proposed treatment of life assurance companies to achieve the objective that this measure will not impact individuals. The government welcomes views on whether these proposals achieve this objective and seeks any alternative views on how this objective could be achieved.

Background

5.3. Life assurance companies hold assets that back life insurance policies held by individuals. The share of the company profits that is allocated to the policyholders for certain life insurance policies is taxed at the basic rate of income tax. Any gains that individuals ultimately receive from the policies are subject to income tax, with relief for the basic rate of tax given for the Corporation Tax that the company has paid.

5.4. Companies that write these policies have Basic Life Assurance and General Annuity Businesses (BLAGAB). Other business written by life insurance companies is known as non-BLAGAB.

5.5. There are specific rules for life insurance companies but in the most part the capital gains or losses are calculated using the general rules. Where assets back both BLAGAB and non-BLAGAB, any gains or losses have to be apportioned to the two businesses.

5.6. BLAGAB gains and losses are further split between the individual policyholders and the shareholders of the company, known as the policyholders' share and the shareholders' share.

5.7. The proportion of BLAGAB gains attributable to shareholders (the shareholders' share) can then be offset by other shareholder (non-BLAGAB) capital losses, including those carried-forward from earlier periods.

5.8. Any BLAGAB losses which do not offset BLAGAB gains of the period are carried-forward to offset future BLAGAB gains.

5.9. Normally a capital gain (or loss) would only accrue on the actual disposal of assets, but the BLAGAB rules deem collective investment fund assets to have been disposed of and reacquired at the end of the accounting period with a resultant capital gain or loss arising.

5.10. These capital gains are then spread across seven years. Capital losses are also spread across seven years but can also be carried back to be set against gains in the preceding two years.

Objective

5.11. The government does not intend this measure to affect individuals investing in assurance based products. Therefore the policyholder share of BLAGAB gains and losses is excluded from the scope of this measure.

5.12. As the shareholder share of BLAGAB gains is a corporate profit the restriction would apply to these gains both in respect of carried-forward BLAGAB losses and carried-forward non-BLAGAB losses.

5.13. BLAGAB losses that are treated as arising over seven years will only be restricted where they are not utilised in the year in which they are deemed to arise and form part of any BLAGAB loss carried-forward. BLAGAB losses which are carried-back will also not be subject to the restriction.

5.14. Any non-BLAGAB capital gains arising for insurance companies would be subject to the restriction.

Method

5.15. To achieve the policy objective, the calculation proposed in Chapter 3 will be amended.

5.16. The government is not making a proposal in this consultation as to how the calculations required for life assurance companies should be structured.

5.17. The government wishes to hear the views of the life assurance industry on the appropriate method of calculation.

Question

Q7. What method of calculation should be used to ensure that the policy objective is met whilst providing a suitable method for life assurance companies?

6. Other considerations

Oil & Gas

6.1. Special rules apply to certain capital gains and losses arising to companies that are involved in UK oil and gas extraction.

6.2. These rules ring-fence capital gains and losses which arise in extraction activities and already restrict the use of losses that arise outside the ring-fence.[3] The profits of ring-fence activities are also subject to Corporation Tax at rates higher than the general rate of Corporation Tax.

6.3. The government proposes to exclude ring-fenced capital gains from the scope of this measure.

6.4. It is proposed that capital gains outside the ring-fence will be subject to the restriction.

Q8. Do you have any comments on this proposed model for oil and gas companies?

Other considerations

Q9. Are there any issues surrounding insolvency or cessation of trade that need to be taken into account in this reform?

Q10. Are there any sectors or types of corporate structure that you consider are particularly affected by this change?

Q11. Are there any other factors or specific issues that you consider need to be taken into account in this reform?

[3] These rules are set out at Section 197 TCGA.

7. Assessment of impacts

Summary of Impacts

Exchequer impact (£m)	2018-19	2019-20	2020-21	2021-22	2022-23	2023-24
	0	+25	+110	+145	+145	+140
	This measure is expected to raise £565 million across the scorecard. These figures are net of the exclusion for life assurance policyholder losses.					
Economic impact	This measure is not expected to have any significant macroeconomic impacts.					
Impact on individuals, households and families	This measure has no impact on individuals as it only affects businesses. The measure is not expected to impact on family formation, stability or breakdown.					
Equalities impacts	This measure does not impact on groups sharing protected characteristics, as it only affects companies. Individuals holding life assurance policies through an insurance company are excluded from this measure so are not affected.					
Impact on businesses and Civil Society Organisations	This measure will impact on a small number of large corporates (less than 1% of the corporate population) who will pay additional tax as a result of this measure, mainly corporates within banking; pharmaceutical; property investment; utilities; groups with a large property portfolio; and insurance. The impact on business administrative burdens is expected to be negligible. One-off costs include familiarisation with the new rules, as well as modification of existing systems following those made for the introduction of CILR. On-going costs include making a calculation annually to determine if this measures still applies. There is no impact on civil society organisations. We will use the proposed consultation to fully identify the impacts on business. The measure has been designed so that Small and Micro Businesses (SMBs) are not affected financially.					

Impact on HMRC or other public sector delivery organisations	HMRC costs including both IT & operational costs to implement this measure are estimated to be approximately £675,000.
Other impacts	This will have no impact on Climate and Fuel Poverty targets, nor on Air Quality Targets. Other impacts have been considered and none have been identified.

Q12. Do you have any comments on the impacts identified in this Chapter?

Q13. Do you consider that there are any other impacts that should be taken into account?

8. Summary of consultation questions

Chapter 3 - Proposed approach

Q1. Will the proposed model be effective in achieving the objective of allowing companies flexibility in allocation of the £5 million deductions allowance whilst making minimal changes to the CILR?

Q2. Could the computation process be made simpler?

Q3. Are there any specific issues relating to capital gains and losses that should be taken into account to ensure fairness in achieving the government objectives?

Q4. What could be done to reduce the administrative requirements of this restriction?

Chapter 4 - Anti-avoidance, commencement and transitional rules

Q5. Will the proposed transitional arrangements be effective in the introduction of the capital loss restriction?

Q6. Are there any issues that should be taken into account in the transitional arrangements?

Chapter 5 - Proposals for life assurance companies

Q7. What method of calculation should be used to ensure that the policy objective is met whilst providing a suitable method for life assurance companies?

Chapter 6 - Other considerations

Q8. Do you have any comments on this proposed model for oil and gas companies?

Q9. Are there any issues surrounding insolvency or cessation of trade that need to be taken into account in this reform?

Q10. Are there any sectors or types of corporate structure that you consider are particularly affected by this change?

Q11. Are there any other factors or specific issues that you consider need to be taken into account in this reform?

Chapter 7 - Assessment of impacts

Q12. Do you have any comments on the impacts identified in this Chapter?

Q13. Do you consider that there are any other impacts that should be taken into account?

9. The consultation process

This consultation is being conducted in line with the Tax Consultation Framework. There are 5 stages to tax policy development:

Stage 1 Setting out objectives and identifying options.

Stage 2 Determining the best option and developing a framework for implementation including detailed policy design.

Stage 3 Drafting legislation to effect the proposed change.

Stage 4 Implementing and monitoring the change.

Stage 5 Reviewing and evaluating the change.

This consultation is taking place during stage 2 of the process. The purpose of the consultation is to seek views on the detailed policy design and a framework for implementation of a specific proposal, rather than to seek views on alternative proposals.

How to respond

A summary of the questions in this consultation is included at Chapter 8.

Responses should be sent by 25 January 2019, by e-mail to reform.capitalloss@hmrc.gsi.gov.uk or by post to:

Capital Loss Reform
Room 3/64
CT Capital Losses, BAI
Her Majesty's Revenue & Customs
100 Parliament Street
London
SW1A 2BQ

Please do not send consultation responses to the Consultation Coordinator.

Paper copies of this document or copies in Welsh and alternative formats (large print, audio and Braille) may be obtained free of charge from the above address. This document can also be accessed from HMRC's GOV.UK pages. All responses will be acknowledged, but it will not be possible to give substantive replies to individual representations.

When responding please say if you are a business, individual or representative body. In the case of representative bodies please provide information on the number and nature of people you represent.

Confidentiality

Information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to information regimes. These are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 2018, General Data Protection Regulation (GDPR) and the Environmental Information Regulations 2004.

If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals with, amongst other things, obligations of confidence. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on HM Revenue & Customs.

Consultation Privacy Notice

This notice sets out how we will use your personal data, and your rights. It is made under Articles 13 and/or 14 of the General Data Protection Regulation.

Your Data

The data

We will process the following personal data:

Name
Email address
Postal address
Phone number
Job title

Purpose

The purpose for which we are processing your personal data is in connection with this consultation on the delivery of the corporate capital loss restriction.

Legal basis of processing

The legal basis for processing your personal data is that the processing is necessary for the exercise of a function of a government department.

Recipients

Your personal data will be shared by us with colleagues in HM Treasury.

Retention

Your personal data will be kept by us for six years and will then be deleted.

Your Rights

- You have the right to request information about how your personal data are processed, and to request a copy of that personal data.

- You have the right to request that any inaccuracies in your personal data are rectified without delay.

- You have the right to request that any incomplete personal data are completed, including by means of a supplementary statement.

- You have the right to request that your personal data are erased if there is no longer a justification for them to be processed.

- You have the right in certain circumstances (for example, where accuracy is contested) to request that the processing of your personal data is restricted.

Complaints

If you consider that your personal data has been misused or mishandled, you may make a complaint to the Information Commissioner, who is an independent regulator. The Information Commissioner can be contacted at:

Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF
0303 123 1113
casework@ico.org.uk

Any complaint to the Information Commissioner is without prejudice to your right to seek redress through the courts.

Contact details

The data controller for your personal data is HM Revenue & Customs. The contact details for the data controller are:

HMRC
100 Parliament Street
Westminster
London SW1A 2BQ

The contact details for HMRC's Data Protection Officer are:

The Data Protection Officer
HM Revenue & Customs
7th Floor, 10 South Colonnade
Canary Wharf, London E14 4PU
advice.dpa@hmrc.gsi.gov.uk

Consultation Principles

This call for evidence is being run in accordance with the government's Consultation Principles.

The Consultation Principles are available on the Cabinet Office website:
http://www.cabinetoffice.gov.uk/resource-library/consultation-principles-guidance

If you have any comments or complaints about the consultation process please contact:

John Pay
Consultation Coordinator
Budget Team
HM Revenue & Customs
100 Parliament Street
London, SW1A 2BQ

Email: hmrc-consultation.co-ordinator@hmrc.gsi.gov.uk

Please do not send responses to the consultation to this address.

Annex A: Examples of calculations

These examples show how the restriction might be computed for singleton companies. Examples involving groups or complex situations have not been included as the purpose of these examples is to show the additional calculations required for the capital loss restriction.

Examples involving groups of companies and alternative situations, such as short accounting periods or company joining or leaving a group can be found in the CILR guidance published at https://www.gov.uk/government/publications/reform-to-corporation-tax-loss-relief-draft-guidance.

Example 6

A company has the following carried-forward losses:-

Capital losses	£12 million
Post-1 April 2017 non-trading losses	£5 million
Post-1 April 2017 trading losses	£3 million

In the year ended 30 April 20X4, the company makes the following profits and gains:-

Capital gains	£11 million
Capital losses	£1 million
Property profits	£3 million
Trading profits	£5 million
Non-trading loan relationship deficits	£2 million

Step 1: Allocate the deductions allowance

The company can choose how much of the £5 million deductions allowance to use against capital losses and how much to use in the CILR.

The company decides to use the entire deductions allowance against capital losses.

Step 2: Perform the CILR computation

The CILR computation will be made using the existing rules.

The company can decide whether to take the non-trading loan relationship deficits into account in the CILR or capital loss restriction computation.

The CILR computation determines that carried-forward losses are restricted to £3 million assuming that the non-trading loan relationship deficits are taken into account in that computation.[4]

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[4] Chargeable gains of nil + Property income of £3 million + Trading profits £5 million - Non-trading loan relationship deficits £2 million = £6 million. There is no deductions allowance to take into account, so 50% of the relevant maximum profits, or £3 million, is the restricted amount of carried-forward losses that can be taken into account.

The company can decide which carried-forward losses will be utilised within that limit of £3 million.

No chargeable gains feature in this calculation.

Step 3: Allocate the deductions allowance to net capital gains

The net chargeable gains for the accounting period are £10 million. This excludes carried-forward capital losses.

The non-trading loan relationship deficits (£2 million) are not taken into account as they were taken into account in the CILR computation.

The deductions allowance allocated of £5 million is then deducted, leaving £5 million subject to the 50% restriction.

Step 4: Calculate the maximum amount of carried-forward losses that can be set against gains

The allowable carried-forward losses that can offset chargeable gains are therefore restricted to 50% of £5 million (£2.5 million) plus £5 million: £7.5 million.

Step 5: Allocate carried-forward losses against capital gains

The net chargeable gains for the accounting period are £10 million.

The company can choose which carried-forward losses, within the normal rules are utilised up to the restriction of £7.5 million.

In this case the company could choose to utilise a mix of carried-forward capital losses and carried-forward post-2017 non-trading losses.

The net chargeable gains arising for the accounting period are therefore £2.5 million (£10 million - £7.5 million).

The computation of the company's profits chargeable to Corporation Tax will also apply the £3 million loss restriction from the CILR computation.

The profits chargeable to Corporation Tax will be £5.5 million.[5]

[5] This is made up of net chargeable gains £2.5 million + Trading profits £5 million - Carried-forward trading losses £1 million + Property income £3 million - Carried-forward post-2017 non-trading losses (restricted) £2 million - Non-trading loan relationship deficits £2 million.

Example 7

A company has the following carried-forward losses:-

Capital losses	£8 million
Post-1 April 2017 non-trading losses	£5 million
Post-1 April 2017 trading losses	£3 million

In the year ended 30 April 20X4, the company makes the following profits and gains:-

Capital gains	£11 million
Capital losses	£1 million
Property profits	£3 million
Trading profits	£5 million
Non-trading loan relationship deficits	£2 million

Step 1: Allocate the deductions allowance

The company can choose how much of the £5 million deductions allowance to use against capital losses and how much to use in the CILR.

The company decides to use the entire deductions allowance against capital losses.

Step 2: Perform the CILR computation

The CILR computation will be made using the current rules.

The company can decide whether to take the non-trading loan relationship deficits into account in the CILR or capital loss restriction computation.

The CILR computation determines that carried-forward losses are restricted to £4 million assuming that the non-trading loan relationship deficits are taken into account in that computation.[6]

The company can decide which carried-forward losses will be utilised within that limit of £4 million.

Chargeable gains of £2 million are taken into account in the CILR calculation.[7]

[6] The relevant maximum profits are Chargeable gains £2 million (£11 million - £1 million - £8 million) + Property income of £3 million + Trading profits £5 million - Non-trading loan relationship deficits £2 million = £8 million. There is no deductions allowance to take into account, so 50% of the relevant maximum profits, or £4 million, is the restricted amount of carried-forward losses that can be taken into account.

[7] These are net chargeable gains taken into account in the CILR computation.

Step 3: Allocate the deductions allowance to net capital gains

The net chargeable gains for the accounting period are £10 million. This excludes carried-forward capital losses.

The non-trading loan relationship deficits (£2 million) are not taken into account as they were taken into account in the CILR computation.

The gains of £2 million taken into account in the CILR calculation are deducted.

The deductions allowance allocated of £5 million is then deducted.

This leaves gains of £3 million subject to the 50% restriction.

Step 4: Calculate the maximum amount of carried-forward losses that can be set against gains

The allowable carried-forward losses that can offset chargeable gains are therefore restricted to 50% of £3 million (£1.5 million) plus £5 million: £6.5 million.

Step 5: Allocate carried-forward losses against capital gains

The net chargeable gains for the accounting period are £10 million.

The company can choose which carried-forward losses, within the normal rules are utilised up to the restriction of £6.5 million.

In this case the company could choose to utilise a mix of carried-forward capital losses and carried-forward post-2017 non-trading losses.

The net chargeable gains arising for the accounting period are therefore £3.5 million (£10 million - £6.5 million).

The computation of the company's profits chargeable to Corporation Tax will also apply the £4 million loss restriction from the CILR computation.

The profits chargeable to Corporation Tax will be £5.5 million.[8]

[8] This is made up of net chargeable gains £3.5 million + Trading profits £5 million - Carried-forward trading losses £1 million + Property income £3 million - Non-trading loan relationship deficits £2 million - Carried-forward post-2017 non-trading losses (restricted) £3 million.

Example 8

A company has the following carried-forward losses:-

Capital losses	£12 million

In the year ended 30 April 20X4, the company makes the following profits and gains:-

Capital gains	£11 million
Capital losses	£1 million
Property profits	£3 million
Trading profits	£5 million
Non-trading loan relationship deficits	£2 million

Step 1: Allocate the deductions allowance

The company can choose how much of the £5 million deductions allowance to use against capital losses and how much to use in the CILR.

The company decides to use £5 million of the deductions allowance against capital losses.

Step 2: Perform the CILR computation

As there are no carried-forward non-capital losses, no CILR computation is required.

Therefore no non-trading loan relationship deficits are taken into account in the CILR computation.

Step 3: Allocate the deductions allowance to net capital gains

The net chargeable gains for the accounting period are £10 million. This excludes carried-forward capital losses.

The non-trading loan relationship deficits (£2 million) are taken into account as they were not taken into account in the CILR computation.

The deductions allowance allocated of £5 million is then deducted.

This leaves £3 million subject to the 50% restriction.

Step 4: Calculate the maximum amount of carried-forward losses that can be set against gains

The allowable carried-forward losses that can offset chargeable gains are therefore restricted to 50% of £3 million (£1.5 million) plus £5 million; therefore £6.5 million.

Step 5: Allocate carried-forward losses against capital gains

The net chargeable gains for the accounting period are £10 million.

The company can choose which carried-forward losses, within the normal rules are utilised up to the restriction of £6.5 million.

In this case, only carried-forward capital losses are available.

The net chargeable gains arising for the accounting period are therefore £3.5 million (£10 million - £6.5 million).

The profits chargeable to Corporation Tax will be £9.5 million.[9]

[9] This is made up of net chargeable gains £3.5 million + Trading profits £5 million + Property income £3 million - Non-trading loan relationship deficits £2 million.

Example 9

A company has the following carried-forward losses:-

Capital losses	£8 million
Trading losses	£3 million

In the year ended 30 April 20X4, the company makes the following profits and gains:-

Capital gains	£11 million
Capital losses	£1 million
Trading profits	£5 million
Non-trading loan relationship deficits	£6 million

Step 1: Allocate the deductions allowance

The company can choose how much of the £5 million deductions allowance to use against capital losses and how much to use in the CILR.

The company decides to use the entire deductions allowance against capital losses.

Step 2: Perform the CILR computation

The CILR computation will be made using the current rules.

The CILR "Relevant Maximum Profits" are nil. The trading profits excluding carried-forward losses are £5 million.

Only £5 million of non-trading loan relationship deficits are required to reduce the profits to nil, so the remaining £1 million must be taken into account in the capital loss restriction computation.

As there are no Relevant Maximum Profits, no carried-forward losses can be utilised.

No chargeable gains feature in this calculation.

Step 3: Allocate the deductions allowance to net capital gains

The net chargeable gains for the accounting period are £10 million. This excludes carried-forward capital losses.

The non-trading loan relationship deficits that were not utilised in the CILR computation (£1 million) are taken into account.

The deductions allowance allocated of £5 million is then deducted leaving £4 million subject to the 50% restriction.

Step 4: Calculate the maximum amount of carried-forward losses that can be set against gains

The allowable carried-forward losses that can offset chargeable gains are therefore restricted to 50% of £4 million (£2 million) plus £5 million; therefore £7 million.

Step 5: Allocate carried-forward losses against capital gains

The net chargeable gains for the accounting period are £10 million.

The company can choose which carried-forward losses, within the normal rules are utilised up to the restriction of £7 million. In this case the company can only utilise carried-forward capital losses.

The net chargeable gains arising for the accounting period are therefore £3 million (£10 million - £7 million).

The computation of the company's profits chargeable to Corporation Tax will also apply the loss restriction from the CILR computation.

The profits chargeable to Corporation Tax will be £2 million.[10]

[10] This is made up of net chargeable gains £3 million + Trading profits £5 million - Carried-forward trading losses (restricted) £nil - Non-trading loan relationship deficits £6 million.

Annex B: Examples of calculations for transitional periods

Example 10

A company has an accounting period ending 31 December 2020 during which capital gains of £20 million and capital losses of £6 million arise giving a net figure of £14 million. It has unused capital losses of £100 million at the end of its previous accounting period but no income losses to carry forward. It has a deductions allowance of £5 million.

The net amount of gains arising in the notional accounting period ending 31 March 2020 is £4 million; for that ending 31 December 2020 it is £10 million (all of the losses arise in the later period).

The net gains of the earlier notional period are fully covered by carried-forward losses of £4 million.

The gains (£16 million) arising the later notional period are subject to the restriction.

Losses arising in the same accounting period (£6 million) are not restricted.

To compute the restriction the company will deduct the £5 million deductions allowance from the net gains of £10 million, leaving £5 million. 50% of this can be offset with carried-forward losses leaving £2.5 million chargeable to Corporation Tax.

The result is that £7.5 million of carried-forward losses are used against the net gains in the second notional period.

Example 11

Had all of the £6 million loss in Example 10 arisen in the earlier notional period then the net position in that notional period would be an allowable loss of £2 million.

That £2 million net loss would not be restricted so far as the later notional period is concerned as it is treated as an in-year loss.

The net gains of the second notional period (ending 31 December 2020) will be gains of £16 million less that £2 million loss, leaving £14 million that are subject to the restriction.

To compute the restriction the company will deduct the £5 million deductions allowance from the net gains of £14 million, leaving £9 million. 50% of this can be offset with carried-forward losses leaving £4.5 million chargeable to Corporation Tax.

The result is that £9.5 million of carried-forward losses are used to offset the net gains in the second notional period.