HM Revenue & Customs

Corporate Capital Loss Restriction

Summary of responses to consultation and the Government's response

July 2019

Contents

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 by introducing a corporate capital loss restriction (CCLR). This will extend the corporate income loss restriction (CILR) introduced in April 2017 to include carried-forward capital losses and ensure that large companies pay tax when making substantial gains. Companies making capital gains will only be able to use carried-forward capital losses to offset up to 50 per cent of those gains.

From 29 October 2018 to 25 January 2019 the Government ran a consultation on the changes and received 24 written responses.

The Government is grateful to all those who took time to respond to this consultation.

A total of 24 issues were raised and this document considers each of these and identifies the Government's response.

This response is being issued alongside draft legislation; the Government would welcome further technical comments on the legislation itself.

2. Introduction

Proposed policy

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

However, the absence of any restriction on the amount of chargeable gains can have undesirable outcomes for the Exchequer, in that businesses making substantial gains may not pay any Corporation Tax on those gains due to losses incurred from historic activities.

At Budget 2018, the Government announced reforms to the corporate capital loss regime to address this and to ensure that businesses making substantial capital gains pay Corporation Tax in the years they make those gains.

The amount of capital gains that can be relieved by carried-forward capital losses will be restricted to 50 per cent, subject to an allowance of £5 million shared with the CILR.

This reform is expected to affect approximately 200 companies who will pay additional tax each year.

Consultation response

Responses were received from a variety of interested parties, including accountants, law societies, trade representative bodies and associations, taxation specialists, actuaries and large businesses operating in the construction, property, utilities and insurance sectors. There was also one response received from an individual.

Of the 13 questions asked in the consultation no response answered all the questions. Some responses only considered a single question of particular interest but most covered several questions, in particular the more general questions.

As would be expected, a number of common themes emerged from the responses but these were not always raised in response to the same question. This document will therefore group common responses to provide the best picture while still reflecting the responses made.

Overall comments

Respondents raised concerns about the timing of this policy in the context of EU exit and the potential impact on UK competitiveness. Several asked the Government to consider delaying or cancelling this policy.

Many argued that the unique treatment of capital disposals and the irregularity with which such disposals occurred were reasons not to apply this restriction. Some commented that gains and losses arise across the life of an asset but are brought into charge only in the year of disposal so restricting losses was unfair.

Government response

The Government is committed to ensuring that the UK has a competitive tax system and remains an attractive place to do business. It notes the views expressed on the appropriateness of this measure.

The Government is, however, committed to implementing these reforms which are a proportionate means of ensuring that businesses pay some Corporation Tax when making substantial gains.

The deductions allowance is designed to remove smaller companies from the scope of these changes and enable them to use their allowable losses without restriction. The restriction will apply to larger businesses which more regularly realise capital gains and capital losses.

The Government will take steps to address unintended consequences of the reform and simplify the measure.

It does not, however, intend to revise the fundamental features of the reforms announced at Budget 2018. These include the date of implementation, the quantum of the £5 million allowance and how allowable capital losses can be offset.

Content of this response document

In Chapter 3 each question asked is detailed along with a summary of the responses and the issues raised by respondents. The Government's response to the issues raised is then set out. A full list of the issues raised can be found in the question 11 response.

Chapter 4 sets out the next steps in respect of the implementation of this measure.

A list of respondents can be found in Annex A.

Terminology

To prevent confusion the terms ‘capital gains’ and ‘capital losses’ have been used throughout this document in place of ‘chargeable gains’ and ‘allowable losses’ as defined within the Taxation of Chargeable Gains Act 1992 (TCGA).

Furthermore capital gains and capital losses are referred to as ‘arising’ in this document rather than the term ‘accruing’ which is used in the TCGA.

3. Responses

The responses received have been sorted by question from the consultation.

For each question, a summary of the responses is presented followed by the Government's response and, where appropriate, a description of the changes to be made.

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?

Summary of responses

Ten responses were received to this question although some responses were combined with Q2.

There were several comments that while the proposals included flexibility, this was illusory as companies with carried-forward capital losses would be more likely to prioritise their use over other losses.

1.1 Combining the CCLR with CILR or separating them completely

Most respondents agreed that the flexibility proposed in allocating the deductions allowance was appropriate or did not specifically argue that it was not.

Several respondents were concerned that the method proposed would be complex in that groups would first have to allocate their deductions allowance between capital gains and income profits before then allocating the income profits amount between trading and non-trading profits.

Some responses noted that groups have not yet had to engage with the CILR rules to the extent anticipated in the consultation so any change would have less of an impact on such companies than suggested in the consultation document.

It was contended by some that amending the CILR rules to incorporate the CCLR rules would reduce the administrative complexity and would therefore be preferable to the proposed method.

Some responses called for the CCLR to be completely separate from the CILR with its own deductions allowance.

Government's response

The Government is persuaded that the proposals in the consultation responses to separate the CCLR would add complexity and appreciates the points made that the CILR is not yet an established provision while also noting that there are advantages in keeping the CCLR rules separate.

Overall the Government judges that the arguments for combining CCLR with CILR outweigh those of keeping them separate so now intends to amend the CILR rules to incorporate the new CCLR changes.

In particular, the Government was persuaded by the arguments made in response to Q4, see below, on the additional administrative burden that would result from the original proposals.

1.2 The deductions allowance

One respondent highlighted that the Government should look to regularly review the amount of the allowance while many others called for the deductions allowance to be increased.

Government's response

The Government considered the case for increasing the deductions allowance at this time.

The £5 million allowance introduced with the CILR was chosen to ensure that the majority of small and medium-sized enterprises (SMEs) would not suffer a loss restriction.

The Government has reviewed the impact on business of introducing the CCLR and is satisfied that the existing £5 million deductions allowance will achieve the aim of limiting the administrative impact on companies.

Maintaining the current allowance will still ensure that 99 per cent of companies will not pay additional tax as a result of this measure, so the Government does not plan to increase the deductions allowance at this time.

Furthermore, the UK's regime remains generous as most other countries who apply a loss restriction provide a deductions allowance of €1 or €2 million and several limit the time in which carried-forward losses can be used.

1.3 Liquidation

One respondent highlighted an issue with respect to companies in liquidation. This issue is considered further in Q9.

Q2. Could the computation process be made simpler?

Summary of responses

Eleven responses were received to this question. Several combined responses for this question and Q1.

Most respondents agreed that the computation could be made simpler by fully combining the CCLR with the CILR and removing the additional steps that were proposed to ensure the two measures interact correctly.

Other responses called for more integration of capital and income losses to make the CCLR simpler to implement; these points are considered below in Q3.

Government's response

The Government agrees that there are compelling arguments to combine the CILR and CCLR with the advantage that the computations can be simplified as a result. It will work to ensure that the steps required in calculating the CCLR are simplified but effective.

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?

Summary of responses

Fourteen responses were received to this question.

Most raised the point that capital gains arise irregularly whereas other income, such as trading profits, arise more evenly over time. They noted that there are fewer opportunities to utilise allowable capital losses so a restriction might result in such losses never being used.

Several respondents therefore distinguished the case for restricting the use of carried-forward capital losses, compared with that for income losses. They also highlighted that in some circumstances income losses may, unlike capital losses, be carried back to offset profits in earlier accounting periods.

Some of the issues raised here will be considered in Q11 as other respondents raised them in respect of that question.

Three suggestions were made to increase fairness. These were:-

- Allow capital losses to be carried-back to offset capital gains in an earlier accounting period (suggestions ranged from one to three years);
- Allow capital losses to be carried-forward for a time period (up to three years) without the restriction being applied;
- Allow capital losses to be used to offset total profits of the company.

Government's response

The Government considered all three proposals. The use of capital losses has historically been restricted to offsetting capital gains in future years.

The ability to carry back losses would not provide a significant benefit to many companies and would not ensure that large companies pay some tax when making substantial capital gains.

The ability to carry capital losses forward for a period of time also does not meet the above policy objective and would create an additional administrative burden on all companies of tracking carried-forward capital losses.

Relaxation of the use of capital losses to offset other profits would result in a large cost to the exchequer; the Government considers that the distinction of capital losses to only offset capital gains remains appropriate.

Furthermore, changes in the use of capital losses for companies would cause asymmetry with the treatment of such losses for individuals and trusts within the scope of capital gains tax and this is not desired.

However, the Government monitors the tax system continuously and will reassess the appropriateness of any changes in the future.

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

Summary of responses

Thirteen responses were received to this question.

Most responses noted that while those paying more tax as a result of the measure were mainly large businesses, all companies are affected by the administrative requirements to allocate the deductions allowance.

Some responses suggested that requirements established for the CILR, including for companies to claim the deductions allowance and groups to allocate the allowance, should be relaxed for small businesses.

A few respondents asked for clear, detailed and early guidance to reduce the initial and ongoing burden on business.

Government's response

The Government appreciates the administrative burden that this measure places on companies but considers that aligning this measure with the CILR will mitigate some of this burden.

The Government has considered whether smaller companies could be excluded from the requirements of this measure. It has been unable to identify a solution that addresses the interaction with the CILR and the difficulty in establishing a simple test or tests that could be applied to all companies and groups without requiring them to perform complex calculations.

The Government will provide detailed guidance to assist companies.

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

Summary of responses

Seven responses were received to this question.

Responses were mixed as to whether the arrangements would be effective; several issues raised are considered further in Q6.

Respondents noted the complexity in creating notional accounting periods and apportioning gains. The administrative burden this would create was also highlighted by some.

Others wanted more clarity on how the anti-avoidance and anti-forestalling measures would apply.

Government's response

The Government wants to ensure that the transitional rules are fair to all while being robust.

It acknowledges the additional administrative burden occasioned by the period of transition but considers this to be the most appropriate option for the reasons set out in Q6 below.

The Government will ensure that clear guidance and examples are provided to mitigate the effects of the additional administrative burden.

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

Summary of responses

Nine responses were received to this question.

6.1 Commencement

Several suggested that the measure should only apply for the first accounting period commencing on or after 1 April 2020, therefore removing the requirement to notionally split the accounting period.

Another suggestion was that as many companies have December year ends the measure should only take effect from 1 January 2021.

Government's response

In considering fairness, the Government's view is that the measure should apply to all companies from the same date to prevent one company having an unfair advantage over another purely because they have different accounting periods.

Furthermore, many large groups have companies with non-aligned accounting dates; this would add to the complexity of the rules if provision were required to address such non-alignment.

The Government sees no advantage in delaying the measure until 1 January 2021 as many companies will still need to apply the transitional rules.

6.2 Computation

Some respondents were concerned at the reduction of the deductions allowance for the short notional accounting period and the inability for otherwise in-year capital losses to be offset against capital gains.

One suggested that gains and losses should be apportioned across the notional accounting periods rather than allocated in whole.

Government's response

The Government intends that the notional periods will only apply for the purposes of capital gains and capital losses to minimise the burden on companies to only those with gains or losses in the transitional period.

As previously set out there will be no restriction applied to capital losses arising in the transitional period where these can offset capital gains arising in either of the notional periods. Equally the deductions allowance of £5 million will not be reduced on account of the length of the notional period.

6.3 Interaction with other provisions

Concerns were raised as to how the corporate interest restriction rules and the special rules that apply to insurance company profits (the BLAGAB rules) would interact with notional periods.

Government's response

The corporate interest restriction requires the calculation of a company's earnings before interest, tax, depreciation and amortisation adjusted for tax purposes (tax-EBITDA) for an accounting period and this will include net chargeable gains. Where the accounting period straddles 1 April 2020, the tax-EBITDA will include the net capital gains for both notional accounting periods – the notional accounting periods should be ignored for the purposes of computing the corporate interest restriction.

6.4 Anti-avoidance

Many responses were concerned at the scope and detail of the anti-forestalling provision calling for detailed guidance, limitation of its scope to specific situations or timeframes and a de-minimis limit. One requested a clearance process for transactions that might be caught by the provision.

Government's response

The Government wishes to ensure that the measure is robust against the possibility of companies making arrangements to avoid or forestall the effect of this measure. It is not possible to identify every scenario which could be designed to counteract the restriction so the legislation needs to be sufficiently drawn to ensure that action can be taken to protect the measure from abuse where appropriate. Genuine commercial transactions will not be captured.

The Government will issue further guidance to explain the scope of this provision along with examples of when the provision will, or will not, be applied to provide more certainty.

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?

Summary of responses

This question concerns the special rules that apply to Basic Life Assurance and General Annuity Business (BLAGAB).

Nine responses were received to this question.

7.1 Shareholders' share

Most respondents highlighted that the proposed approach of excluding the shareholders' share of BLAGAB gains and losses would not achieve the policy objective of not affecting individuals. Many respondents suggested that the exemption should be extended so there is no restriction of BLAGAB losses against BLAGAB gains to avoid affecting individuals.

Many respondents explained that in reality, most insurers do not calculate the shareholders' share of BLAGAB gains and losses. They explained that applying the restriction in the proposed way would require all insurers to complete this calculation and add further complexity into the regime.

Many explained that a restriction of the shareholders' share of BLAGAB gains and losses would give anomalous results due to the volatility of the shareholders' share.

Government's response

The Government considers that these concerns are justified. It is not the Government's intention for the restriction to affect individuals. The Government will therefore legislate to ensure that there is no restriction of BLAGAB losses against BLAGAB gains. The restriction will apply as normal to non-BLAGAB and where BLAGAB gains are reduced by non-BLAGAB losses.

7.2 Other impacts

Some respondents noted the interaction with deferred tax and potential difficulties in the assessment of recoverability of deferred tax assets and unintended solvency impact.

Government's response

The Government understands that this approach will also mitigate the unintended solvency impact, and therefore does not see any requirement for special rules to apply in respect of shock losses.

7.3 Other issues

Other concerns were raised about the complexity of the approach, the policyholder nature of I-E items and interactions with the Minimum Profits Test.

Some respondents also noted the interaction between the loss restriction and other areas of the BLAGAB regime, where the legislation remains open to interpretation.

Government's response

The Government will also seek to clarify certain parts of the BLAGAB regime, to ensure that the restriction operates effectively.

This includes:

- Clarification that I-E profit for the purposes of Minimum Profits Test and section 210A TCGA should be the I-E profit before deducting non-BLAGAB losses from the BLAGAB gains;
- Clarification that the shareholders' share of the BLAGAB gains should be calculated using the net BLAGAB gains.

The Government would welcome further comments from stakeholders on these changes during the period of technical consultation (see chapter on Next Steps below).

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

Summary of responses

Six responses were received to this question.

All agreed that the specific provision was appropriate and consistent with the current treatment for this industry.

One response sought an extension of this treatment for specific non-material disposals such as disposals of licences in undeveloped areas, certain disposals where both parties use the asset within their ring-fence trade and disposals by non-residents of certain UK Continental Shelf oil rights or assets.

Government's response

The Government considers that the proposals are appropriate and does not see any need to extend the restriction or revisit the scope of the ring-fence at the current time.

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

Summary of responses

Nine responses were received to this question.

Most agreed that specific provision should be made for companies in distress.

The main suggestions were to introduce a terminal loss relief similar to that provided in CILR or make some provision turning off the restriction around the period of liquidation.

Some respondents also suggested the introduction of a corporate rescue exemption in respect of both the CCLR and CILR, in line with the one applicable in the loan relationships regime.

One respondent also raised concerns in relation to the final computation for companies with BLAGAB.

Government's response

HM Revenue & Customs and HM Treasury liaised closely with the professional body R3 (The Association of Business Recovery Professionals) on this issue.

The Government is still considering whether it is appropriate to include specific provision for insolvent companies and will provide an update on this issue in due course.

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

Summary of responses

Ten responses were received to this question.

Many respondents highlighted the property and real estate sectors as being particularly affected due to the increased frequency and larger amounts of gains.

Other sectors noted as being affected included retail, financial sector, aggregates, utilities and life insurance.

It was also noted that Real Estate Investment Trusts (REITs) would also be affected.

Government's response

The Government has considered the concerns raised by stakeholders about sectors with more gains being particularly affected by the restriction.

The Government recognises that the restriction will have an impact on sectors making frequent gains. However, it considers this to be an acceptable consequential impact of the restriction. It has reviewed the effect of the measure on different sectors and considers that the property sector, while being affected, is not disproportionately affected by the policy.

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

Summary of responses

Eleven responses were received specifically addressing this question.

A total of twenty-four issues have been raised in the consultation responses, some of which have been addressed in other questions in this document. For completeness a full list of issues is reproduced here.

1. BLAGAB (see Q7);
2. Deferred tax;
3. Real Estate Investment Trusts (REITs);
4. Carry forward or carry back of capital losses (see Q3);
5. Annual deductions allowance (see Q1);
6. Relaxation of use of capital losses (see Q3);
7. Terminal/insolvency loss relief (see Q9);
8. Commencement and transitional rules (see Q6);
9. Anti-forestalling rules (see Q6);
10. Order of loss offset;
11. Part disposals;
12. Gateway test and administrative burden for small companies (see Q4);
13. Hedging of capital assets;
14. Connected party losses;
15. Streamed losses;
16. One-day accounting periods;
17. Special Purpose Vehicles (SPVs);
18. Corporation Tax (CT) Returns;
19. Group Allowance Allocation Statements (GAAS) (see Q4);
20. Oil and gas ringfence extension (see Q8);
21. Special exemptions for certain sectors;
22. Negligible Value Claims;
23. Depreciatory transactions;
24. Corporate interest restriction (see Q6).

11.2 Deferred tax

Some respondents highlighted that the restriction could diminish the balance sheet recognition that groups currently have for their carried-forward capital losses, either as a separate Deferred Tax Asset (DTA) or as a reduction in recognised Deferred Tax Liabilities (DTLs).

Some stakeholders also raised concerns about the proposed BLAGAB carveout having a significant impact on DTAs held by life insurance companies due to the volatility of the shareholders' share.

Government's response

The Government has consulted with the insurance sector, accounting firms and the Prudential Regulation Authority (PRA) on this issue.

The Government understands the significance of carried-forward capital losses for companies' deferred tax balances. It understands that the restriction could also have an impact on regulatory capital requirements.

The Government considers that a reduction in the balance sheet value for some groups is an acceptable consequential impact of the new rules. It considers that the overall impact of the restriction on deferred tax is expected to be marginal, given the difficulty in recognising carried-forward capital losses for deferred tax purposes.

The Government recognises the potential impact on insurers with BLAGAB and considers that the changes being made in respect of the exemption (see Q7) will mitigate this issue.

The Government will continue to monitor closely any regulatory consequences of the CCLR.

11.3 REITs

The REIT regime grants an exemption from Corporation Tax to companies for the profits of their property rental business, conditional on 90 per cent of the UK property rental profits being distributed to the REIT shareholders every year.

This means that the gains made on assets that are used in the property rental business are not chargeable gains for Corporation Tax purposes.

Some respondents proposed that REITs property rental business should be exempt from the CCLR as the restriction could affect the profile of the property income distributions and potentially affect individuals.

One respondent also suggested that the application of the CCLR to gains which have become chargeable as a result of the 3-year development rule (S556 CTA 2010) would be overly harsh.

Government's response

The Government agrees that application of the CCLR to a REIT's property rental business would be an unintended outcome of the measure as it could result in an impact on individuals which goes against the policy objective. The Government will legislate to exclude a REIT's property rental business from the CCLR.

The Government has considered concerns in respect of gains that have become chargeable as a result of the 3-year development rule. The Government does not consider there to be a strong rationale to disapply the CCLR for such cases.

11.10 Order of loss offset

Some responses were concerned that the CCLR will change the order of set-off of carried-forward capital losses to require that in-year capital losses are set-off before carried-forward capital losses.

Some further issues raised in respect of this point are considered at issues 14 and 15.

Government's response

The Government does not intend to change the rules on the order of loss offset. It is aware that certain issues arise in respect of streamed losses and connected party losses (see issues 14 & 15).

11.11 Part disposals

Some respondents raised the issue that where there is a part disposal of an asset which gives rise to a loss, that loss will be subject to the restriction if it is carried forward and if a capital gain arises when there is a disposal of the remainder of the asset in a later accounting period.

Government's response

The Government does not consider that special treatment is appropriate as there is no precedent for linking part disposals (such as where a gain arises before a loss) and there is no strong rationale for differentiating part disposals from separate disposals. Special treatment could also result in unintended consequences where there are issues in identifying if a previous disposal is linked to a later disposal and would also lead to additional administrative requirements in tracking the source of carried-forward capital losses.

11.13 Hedging of capital assets

One respondent suggested that a capital loss should not be restricted where a capital gain arises in a later accounting period where the loss and gain arise as a result of an economic hedge.

Government's response

The Government does not intend to apply the CCLR where a capital loss can be used to offset a capital gain arising in the same accounting period, such as where there is a disposal of the asset and hedge at similar times.

The Government does not see justification in providing specific provision where there is a time interval between the disposal of the asset and the hedge. The current rules already mean that where the capital loss arises in a later accounting period it cannot be used to offset the earlier gain even where the two are linked hedging disposals. Furthermore, it has not seen evidence that this is likely to be a significant issue in practice.

11.14 Connected party losses

When an asset is disposed of to a party connected with the person making the disposal, the capital loss can only be used to offset a later capital gain that arises on a disposal to that same connected party.

Respondents were concerned that since connected party losses are already subject to a restriction, imposing an additional 50 per cent restriction would be excessive and would add complexity. It was suggested that the restriction should be disapplied.

Respondents were also concerned that the use of unrestricted in-year capital losses in preference to carried-forward (restricted) losses would make such losses difficult to use.

> **Government's response**
>
> The Government agrees that there is justification in allowing a company to prioritise the use of such carried-forward capital losses. The Government will allow companies to use carried-forward connected party losses in place of capital losses arising in the accounting period (so far as such connected party losses could have been used to offset connected party gains in the same period had the in-year capital losses not been present).

11.15 Streamed losses

The current rules require certain capital losses to be streamed in that they can only be used to offset certain gains in the future. These are also known as pre-entry capital losses.

As with issue 14, respondents were concerned about imposing a restriction onto losses that are already restricted.

Respondents also highlighted the difficulty for groups in using these losses if in-year capital losses will be used preferentially.

> **Government's response**
>
> The Government agrees that there is justification in allowing a company to prioritise the use of such carried-forward losses. The Government will allow companies to use carried-forward streamed losses in place of capital losses arising in the accounting period so far as appropriate gains are available to be offset by those losses in the same period.

11.16 One-day accounting periods

One response raised the issue of companies who make a disposal giving rise to a capital gain where that company is not otherwise chargeable to CT. Such a company will have a one-day accounting period. If that company has carried-forward capital losses the annual deductions allowance of £5 million will be reduced on account of the one-day accounting period to 1/365th. This would result in companies with relatively small gains facing a loss restriction.

Government's response

The Government agrees that the application of the CCLR to companies with one-day accounting periods could result in unintended consequences. It will therefore allow companies with one-day accounting periods to be able to access the full £5 million deductions allowance per financial year.

The Government has further considered issues arising around one-day accounting periods, especially as recent changes to bring non-resident corporate landlords within the scope of CT will result in more one-day accounting periods. The Government has adopted a concessionary treatment[1] to ensure that such companies are not considered to be 'very large' for quarterly instalment payments (this is because the £20 million profits criteria for 'very large' is divided by 365 for a one-day accounting period)[2]; they will instead be treated as 'large'[3]. The Government intends to legislate this concessionary treatment at a later date.

The Government will also introduce new rules that allow companies with multiple one-day accounting periods in a financial year to offset capital losses against capital gains arising in that financial year.

11.17 Special Purpose Vehicles (SPVs)

An SPV is a legal entity generally created to fulfil narrow, specific or temporary objectives. SPVs are typically used by investment funds to isolate financial risk.

During their lifespan, those funds acquire a number of development properties with a view to securing an income stream and repatriating the cash back to their investors prior to being wound up.

The specific concerns raised are that the shorter life of SPVs means that the CCLR will disproportionately affect them as they already have limited opportunities to use their capital losses which are further limited by the CCLR.

Government's response

The Government does not consider that specific treatment for SPVs is appropriate as it could result in unintended consequences by incentivising their use over other arrangements.

[1] As at https://www.gov.uk/guidance/register-a-non-resident-company-for-corporation-tax.
[2] This would require the company to pay any CT due on the day of the one-day accounting period.
[3] This would require the company to pay any CT due 3 months and 14 days after the end of the accounting period.

11.18 Corporation Tax (CT) Returns

Some respondents called for amendments to be made to the CT Return (CT600) to prompt the requirements for CILR and CCLR which could include a box for declaring the deductions allowance.

Government's response

The Government considers that while changes to the CT return (CT600) might be welcomed by some they would impose an additional burden on others. It considers that the costs of amending the return and computer systems would significantly outweigh the benefit.

11.21 Specific exemptions for certain sectors

A number of responses sought specific exemptions for certain sectors.

These were the utilities sector where assets that were historically used in supplying the nation's energy needs are being divested; medical research companies who often accumulate substantial losses before making substantial profits; property companies with a high turnover of losses and gains over time; technology companies who have to invest heavily before making any return.

Government's response

The Government made an exemption in respect of oil and gas because that industry is subject to a specific tax regime at a higher rate of CT. The Government does not propose to make any specific exemptions from this restriction for other sectors as this would unfairly advantage those sectors.

11.22 Negligible Value Claims

If a company owns an asset which has become of negligible value, it can make a claim to be treated as if it had sold the asset and immediately reacquired it at the time the claim is made for an amount equal to its (negligible) value at that time.

The loss created by the claim will, if carried-forward, be subject to the CCLR.

One stakeholder has asked for clarity on the treatment of negligible value claims and its interaction with the CCLR.

Government's response

The Government considers that the CCLR will apply to carried-forward capital losses created by a claim in the same way as any other loss. It notes that companies have discretion on the timing of a claim so need only submit a claim when it wishes to utilise the loss.

11.23 Depreciatory transactions

A depreciatory transaction is one that takes value out of shares, which might be by transferring the assets of a company to another company within a group for little or no cost. This reduces the value of the shares but without any economic loss to the group. The depreciatory transaction rules reverse the effect of such transactions across the life of the company when computing capital gains.

One respondent asked that the 6-year period over which a company must look back when identifying depreciatory transactions (which was recently removed) be re-introduced to reduce the administrative burden on companies as a balance to the additional requirements occasioned by this measure. They suggested that this time limit should also apply to the value shifting rules, which apply in similar circumstances.

Government's response

The Government does not intend to reintroduce the 6-year rule for depreciatory transactions or introduce one for the value shifting rules as there is no justification within the scope of the CCLR for such a change.

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

Summary of responses

Five responses were received to this question.

12.1 Impact on business

The administrative impact of the measure was raised as a concern as companies will face an additional administrative burden in allocating the deductions allowance even when this does not result in brought forward capital losses being restricted.

One response questioned the assessment of impact that the business administrative burdens was expected to be negligible, and expected it to be higher than the estimate provided.

One response was concerned that the financial impact would be wider than stated while another thought up to 18,000 companies might need to apply the restriction.

Government's response

The Government recognises the administrative impact of this measure but does not consider that the requirements already in place for the CILR will be significantly added to by this measure, especially given the changes to more closely incorporate this measure with the CILR.

12.2 Exchequer impact in 2019 to 2020

One response questioned why there was a financial impact in 2019-20 when the measure commences on 1 April 2020.

Government's response

The financial impact in 2019-20 relates to the timing of quarterly instalment payments (QIPs). These payments relate to accounting periods in 2020-21 but for which QIPs are paid in 2019-20.

12.3 Exchequer impact - interaction with other policy changes

One response also asked if the scorecard costings took into account the freezing of indexation allowance and the introduction of structures and buildings allowance (SBA).

Government's response

The analysis on this measure has shown that only about 200 companies per year should need to apply the capital loss restriction. This analysis considers the impact of other measures already announced or introduced such as the freezing of indexation allowance and the SBA.

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

Summary of responses

Three responses were received specifically to this question although other impacts have also been considered elsewhere by respondents.

13.1 Software providers

The impact on accounting package software providers was highlighted; the respondent had liaised with a large software provider and advised that combining this measure with the CILR would make the software changes easier for the developer.

Government's response

The Government notes the impact on software providers and took the comments into account when deciding to incorporate this measure within the existing CILR rules.

13.2 Other impacts

Several respondents highlighted the timing of the policy in the context of EU exit and the need to ensure that the UK encourages business.

Government's response

The Government is committed to ensuring that the UK is an attractive place for business and that the tax system reflects this commitment. This measure is a necessary step to ensure that the tax system remains fair to all while ensuring that large businesses pay some tax when making substantial capital gains.

4. Next steps

This document sets out the issues raised during the consultation and the Government's response in general terms.

The Government has published draft legislation alongside this response document. That draft legislation along with the Explanatory Notes explains in more detail how the CCLR will be implemented. More detail on how the Government intends to implement the changes arising from the consultation responses is also included.

The Government will introduce the legislation formally in Finance Bill 2019 later this year. The draft legislation has been made available now for a period of technical consultation.

If you have any comments on the draft legislation, please email reform.capitalloss@hmrc.gov.uk by 23 August 2019.

Annex A: List of stakeholders consulted

The 100 Group - Taxation Committee

Association of British Insurers

Association of Taxation Technicians

Aviva Plc

British Property Federation

Chartered Institute of Taxation

Confederation of British Industry

Deloitte LLP

Ernst & Young LLP

Grosvenor Group Ltd

Hanson UK

Institute & Faculty of Actuaries

Institute of Chartered Accountants in England & Wales

Institute of Chartered Accountants of Scotland

Investment & Life Assurance Group

Kingston Smith LLP

The Law Society

Mazars LLP

National Grid Plc

Oil Taxation Action Committee

PricewaterhouseCoopers LLP

R3 - The Association of Business Recovery Professionals

Wilson Wright LLP

1 individual