

Clause 1 and Schedule 1: Corporate capital losses

Summary

1. This clause and Schedule introduces a restriction on the amount of chargeable (capital) gains that a company can relieve with its carried-forward allowable (capital) losses from previous accounting periods. A company will only be able to offset up to 50% of chargeable gains using carried forward capital losses. Various other changes that are required to deliver or support this measure are also included as set out below. The measure has effect from 1 April 2020.

Details of the clause and Schedule

2. Clause 1 introduces new Schedule 1.
3. Part 1 of Schedule 1 (paragraphs 1 to 31) deals with the changes required to introduce the corporate capital loss restriction (CCLR).
4. Part 2 of Schedule 1 (paragraphs 32 to 34) introduces changes in the treatment of allowable losses for companies without a source of chargeable income and deals with other required minor amendments.
5. Part 3 of Schedule 1 (paragraphs 35 to 38) contains the commencement and anti-forestalling provisions for the corporate capital loss restriction.

Schedule 1

Part 1 - Corporate capital loss restriction

Restriction on deductions from chargeable gains: main provisions

6. Paragraph 1 introduces the amendments to Part 7ZA of Corporation Tax Act (CTA) 2010 (which applies a restriction on various carried-forward losses).
7. Paragraph 2 introduces a new Section 269ZBA which sets out how the capital loss restriction will apply.
8. Subsection 1 of new Section 269ZBA confirms that the new section has effect for determining the taxable total profits of a company.
9. Subsection 2 of new Section 269ZBA introduces a restriction (the relevant maximum) on the amount of carried-forward allowable (capital) losses that a company can use to offset chargeable gains.

10. Subsection 3 of new Section 269ZBA defines the relevant maximum amount of carried-forward losses that can be offset against chargeable gains as the sum of:
 - 50 per cent of relevant chargeable gains; and
 - A chosen amount of capital gains deductions allowance.
11. Subsection 4 of new Section 269ZBA confirms that relevant chargeable gains are as defined in Section 269ZF (see paragraph 16 below).
12. Subsections 5 to 6 of new Section 269ZBA define and limit the chargeable gains deductions allowance. In particular they confirm that the maximum amount of deductions allowance for a company is shared between the trading profits deductions allowance, non-trading income profits deductions allowance, BLAGAB deductions allowance (see paragraph 29 onwards below) and chargeable gains deductions allowance.
13. Subsection 7 of new Section 269ZBA provides that no restriction is required where the company's qualifying chargeable gains (as set out in paragraph (1) of Step (1) in Section 269ZF(3)) are nil.
14. Paragraph 3 amends Section 269ZC (restriction of the use of various carried-forward losses against non-trading profits). This section is amended so that the restriction on use of carried-forward capital losses in Section 269ZBA is taken into account in the wider restriction on the use of carried-forward non-trading losses.
15. Paragraph 4 amends Section 269ZD (restriction of the use of various carried-forward losses against total profits). This section is amended so that the restrictions on use of carried-forward capital losses in Section 269ZBA and Section 269ZC are taken into account in the wider restriction on the use of carried-forward losses.
16. Paragraph 5 amends Section 269ZF ("relevant trading profits" and "relevant non-trading profits"). Sub-section 2A is inserted to define a company's relevant chargeable gains as its qualifying chargeable gains for the period less the chargeable gains deductions allowance (which amount cannot be less than nil). Subsection 2B is inserted to define a company's total relevant non-trading profits as the total of the company's qualifying non-trading income profits for the period and qualifying chargeable gains for the period.
17. Paragraph 6 amends Section 269ZF(3) to replace Steps 3, 4 and 5 (determining company's qualifying trading profits and qualifying non-trading profits for an accounting period) to incorporate the need to separate chargeable gains from total profits to apply the CCLR.
18. Paragraph 7 makes a minor consequential amendment to Section 269ZF(4) to reflect the change in the calculation of modified total profits.
19. Paragraph 8 introduces new Section 269ZYA which sets out specific provision for certain companies with one-day accounting periods to make claims for deductions allowances of up to £5 million each financial year.

20. Subsection 1 of new Section 269ZYA sets out the conditions for a company making a claim in respect of an accounting period as:-
- The accounting period falls wholly within a financial year (1 April to 31 March);
 - The company is only chargeable to Corporation Tax (CT) because of a chargeable gain in that period;
 - The company and any company in the group (as set out in Section 269ZZB) has no source of chargeable income at any time during the financial year.
21. Subsection 2 of new Section 269ZYA sets out the deductions allowance for the company making a claim as the lower of:-
- The available deductions allowance amount for an accounting period;
 - The total carried-forward allowable (capital) losses of the company;
 - The chargeable gains of the accounting period.
22. Subsection 3 of new Section 269ZYA defines the available deductions allowance amount as £5 million less the amounts of deductions allowance already claimed or used (or which could have been claimed) by any company within the group during the financial year.
23. Subsection 4 of new Section 269ZYA sets out the time limits for making a claim. A claim can be made between the end of the financial year and two years after the end of the accounting period.
24. Subsection 5 of new Section 269ZYA defines a company with no source of chargeable income as one that is:-
- Not within the charge to CT, or;
 - Only chargeable to CT on account of chargeable gains.
25. Paragraph 8 also introduces new Section 269ZYB which allows a company to make a provisional application of new Section 269ZYA where all the conditions for a claim have not yet been met.
26. Subsections 1 to 3 of new Section 269ZYB set out when a company can make a provisional declaration. Such a declaration can only be made where:-
- The company delivers a return before the end of the financial year;
 - The company intends to make a claim under new Section 269ZYA, and;
 - The company is only prevented from making such a claim because the condition at Subsection (1)(c) of new Section 269ZYA cannot yet be

shown to have been met.

27. Subsections 4 and 5 of new Section 269ZYB set out the when the declaration will cease to have effect either through an occurrence (such as a new source of chargeable income) or through the passage of time.
28. Subsections 6 and 7 of new Section 269ZYB set out what happens when a declaration ceases to have effect.

Insurance companies: ring fence

29. Paragraphs 9 to 12 set out how the regime applies to insurers within the Basic Life Assurance and General Annuity Business (BLAGAB).
30. Paragraph 9 amends Section 210A of TCGA (insurance: ring fencing of losses) to allow the capital loss restriction to apply appropriately where non-BLAGAB allowable losses are offset against BLAGAB chargeable gains.
31. Subsection 2A of Section 210A of TCGA separates out the available non-BLAGAB allowable losses into those of the accounting period and those previously accruing to the company.
32. Subsection 2C of Section 210A of 210A defines the available non-BLAGAB allowable losses.
33. Subsection 13 of Section 210A of TCGA is amended to modify the definition of BLAGAB chargeable gains to clarify that these are BLAGAB chargeable gains that have been adjusted by deducting BLAGAB allowable losses.
34. Paragraph 10 introduces new Section 269ZFC which sets out how the capital loss restriction will apply where non-BLAGAB allowable losses are offset against BLAGAB chargeable gains.
35. Subsections 2 and 3 of new Section 269ZFC provide the maximum amount of non-BLAGAB carried-forward allowable losses that can be offset against BLAGAB chargeable gains which comprises:
 - 50 per cent of the relevant BLAGAB chargeable gains; and
 - A chosen amount of BLAGAB deductions allowance.
36. Subsection 4 of new Section 269ZFC defines the relevant BLAGAB chargeable gains.
37. Subsections 5 to 6 of new Section 269ZFC define the BLAGAB deductions allowance.
38. Paragraph 11 amends Section 269ZD and section 269ZFB. These sections are amended so that the restrictions on use of carried-forward non-BLAGAB allowable losses in Section 269ZFC are taken into account in the wider restriction on use of carried-forward losses.
39. Paragraph 12 amends Section 95 of Finance Act 2012 (use of non-BLAGAB allowable losses to reduce I-E profit) to take into account the changes to Section 210A of TCGA.

Oil activities: ring fence

40. Paragraph 13 amends Section 197 of Taxation of Chargeable Gains Act 1992 (TCGA) (ring fence provisions for certain disposals of interests in oil fields) to confirm that certain ring-fence allowable losses are not to be restricted.

Clogged losses

41. Paragraph 14 amends Section 18 TCGA (transactions between connected persons) to introduce a claim to allow a company to deduct carried-forward “clogged” losses (losses which arise on a disposal to a connected person) in preference to losses that arise in a period. This provision applies where the clogged losses could have been offset but for the CCLR.

Pre-entry losses

42. Paragraph 15 amends Schedule 7A TCGA (restriction on set-off of pre-entry losses) to ensure that the CCLR applies to carried-forward pre-entry losses. Carried-forward pre-entry losses are defined in Schedule 7A TCGA and do not form part of the carried-forward allowable losses under Section 2A(1)(b) TCGA.
43. New Sub-paragraphs 1A, 1B and 1C are inserted into Paragraph 6 of Schedule 7A to ensure that where pre-entry losses are offset against appropriate gains, the CCLR has effect. The total amount of carried-forward losses are restricted as if the pre-entry carried-forward losses were carried-forward allowable losses under Section 2A(1)(b) TCGA. Where carried-forward pre-entry losses have been used in preference to allowable losses in the period, the latter are restricted (similar to the treatment for clogged losses).

Real estate investment trusts (REITs)

44. Paragraph 16 introduces the amendments to Part 12 of CTA 2010.
45. Paragraph 17 amends Section 535 CTA 2010 (gains accruing to a REIT) to introduce new subsection 10; this confirms that the restriction does not apply to such gains.
46. Paragraph 18 amends Section 535B CTA 2010 (use of pre-April 2019 residual business losses or deficits) to introduce new subsection 4; this confirms that the restriction should not apply to the use of pre-April 2019 losses when determining the net gains that would have accrued to the residual business of the company under this Section.
47. Paragraph 19 makes a consequential amendment to Section 556 CTA 2010 (disposal of assets).

Counteraction of avoidance arrangements

48. Paragraph 20 amends Section 19 of Finance (No. 2) Act 2017 (losses: counteraction of avoidance arrangements) to expand those rules to include capital losses within its scope.

Minor and consequential amendments to Part 7ZA of CTA 2010

49. Paragraphs 21 to 31 contains minor and consequential amendments to Part 7ZA of CTA 2010 that flow from this new legislation.

Part 2 - Corporate capital loss deductions: miscellaneous provision

Companies without a source of chargeable income: carry back of losses

50. Paragraph 32 amends Section 2A TCGA to provide that where a company has more than one one-day accounting period where the company is only within the charge to CT because of chargeable gains, it is able to offset allowable losses against any chargeable gains accruing in the same financial year and without the CCLR applying.

Insurance companies: minor amendments

51. Paragraphs 33 to 34 clarify that for the purposes of Section 210A(10A) and (10B) TCGA, and Section 93 Finance Act 2012 non-BLAGAB allowable losses are assumed not to have been deducted from BLAGAB chargeable gains.

Part 3 - Commencement and anti-forestalling provision

Commencement

52. Paragraph 35 confirms that this Schedule has effect for accounting periods beginning on or after 1 April 2020 so carried-forward losses are restricted when set against gains after that date.
53. Paragraph 36 provides that where an accounting period straddles 1 April 2020 that straddling period will be split into a notional pre-commencement period and post-commencement period, and specific treatment, as set out in Paragraph 37 will apply.
54. Paragraph 37 provides that, for chargeable gains, the amount of chargeable gains should be separately computed for the pre-commencement and post-commencement periods. Losses accruing in the post-commencement period can be set-off against gains in the pre-commencement period. The CCLR will only apply to pre-1 April 2020 capital losses carried-forward to the post-commencement period.

Anti-forestalling provision

55. Paragraph 38 provides an anti-forestalling provision which applies to accounting periods ending on or after 29 October 2018 which end before 1 April 2020. It also applies to the pre-commencement periods in any straddling period.
56. This provision applies where a company enters into arrangements with a main purpose of securing a tax advantage in respect of the CCLR before it comes into force. Where this provision applies, the effect is to restrict the carried-forward allowable losses to no more than 50% of the qualifying chargeable gains. No deductions allowance is available where this provision is applied.

Background note

57. This restriction has been introduced to ensure that large companies pay some corporation tax when making substantial chargeable gains. It was announced at Budget 2018 alongside a consultation on delivery. The following paragraphs provide the background to the measure as announced at Budget 2018.
58. Finance (No 2) Act 2017 introduced restrictions on the use of certain carried-forward losses by companies against profits in a later accounting period (the Corporate Income Loss Restriction or “CILR”). This restriction expands that previous restriction to include carried-forward capital losses. The CILR included a deductions allowance of £5 million for each corporate group which is shared with this capital loss restriction.
59. Individuals are not affected by this restriction. Individuals holding life assurance policies through a corporate wrapper or receiving dividends from a REIT are excluded from this measure so are not affected.
60. Ring fenced allowable (capital) losses arising in certain UK extraction activities of oil and gas companies are not subject to the restriction.
61. A Targeted Anti-Avoidance Rule counters arrangements which seek to exploit the deductions allowance. This expands the rule introduced in April 2017 for the CILR. An anti-forestalling rule, which applies from 29 October 2018, counters arrangements designed to frustrate the effect of this restriction.
62. Following the consultation a number of changes are made to the rules. The following paragraphs provide the background to these changes (full details are in the consultation response document).
63. This restriction is being delivered, as set out above, by amendment of Part 7ZA of CTA 2010 rather than as a standalone provision.
64. This restriction will not apply to carried-forward BLAGAB losses where these are used to offset the shareholders’ share of BLAGAB profits but will apply to those used to offset non-BLAGAB gains. Carried-forward non-BLAGAB losses are subject to the restriction however they are used. Certain parts of the BLAGAB regime are clarified as a result of these changes.
65. Specific rules are introduced to enable companies to prioritise the use of certain restricted (connected party and streamed) carried-forward allowable losses. Wider issues were identified in respect of one-day accounting periods. These rules address issues relating to the use of allowable losses within the same financial year and certain payment issues.
66. If you have any questions about this change, or comments on the legislation, please contact the Business, Assets and International Policy team by email to reform.capitalloss@hmrc.gov.uk.