



CARRIED-FORWARD CORPORATION TAX LOSSES (FINANCE (NO 2) ACT 2017)

Issued 11 September 2018

ICAEW Tax Faculty comments to HMRC following meeting on 9 April 2018.

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RELIEF FOR CARRIED-FORWARD LOSSES

Background

1. Finance (No 2) Act 2017 introduced changes to how losses can be carried-forward by companies.
2. A number of concerns have since come to our attention and, following a meeting between HMRC and ICAEW on 9 April 2018, we set these out below together with our recommendations.

Requirement for a singleton company to specify the deductions allowance

3. Section 269ZZ(1), Finance (No2) Act 2017 states that:
“A company’s tax return for an accounting period must specify –
 - (a) *The amount of the company’s deductions allowance for the period, and*
 - (b) *.....”*
4. Sections 269ZB(7)(a) and 269ZC(5)(a) set out the requirements to split the deductions allowance between different types of loss.
5. We are concerned that the requirement to state the deductions allowance in a year where losses are to be used, regardless of the level of profits in the company, imposes a disproportionate burden on the majority of companies which we understand were clearly not the intended target of the new legislation. Failure to state the allowance on the corporation tax return will result in the company only being able to carry forward losses against 50% of its future profits. The Tax Information and Impact Note states that “99% of companies” will be unaffected by the restriction. This is clearly not the case as there is an administrative requirement which all companies must comply with regardless of profit levels.
6. Given that this requirement is now in force we are also concerned that it is not clear, in legislation or guidance, exactly what must be stated and where to satisfy the requirements of ss 269ZB(7)(a), 269ZC(5)(a) and 269ZZ(1).
7. There is no white space or box on the CT600 to state the deductions allowance, and the guidance which accompanies the CT600 does not provide any instructions either. This is causing concern for many of our members who are unaware of where they need to state the allowance and precisely what must be recorded. It is not acceptable to require companies to state the deductions allowance on the return but then not to provide space in which to do so.
8. We note that the Company Losses Toolkit for 2017-18 returns does not include a check box to indicate that this has been clearly labelled, and so specified, in the computation, although the rules are explained later in the document in the Explanation and Mitigation of risks section.
9. Given that ss 269ZB(7)(b) and 269ZC(5)(b) state respectively that where the company fails to state the deductions allowance, the allowance for the period is nil for trading profits and non-trade profits, it is paramount that the guidance explains how and where this calculation should be presented.

Our recommendations

10. Pending further consideration of an amendment to the rules in Finance (No 2) Act 2017 to address the problem, we recommend, in the meantime, that HMRC makes it clear exactly what will and will not be acceptable when meeting the requirements set out above.
11. The requirement to state the allowance (and split is between different types of loss) must be much more prominent in the guidance.
12. We recommend that HMRC amends the existing CT600 return to include space to declare the deductions allowances. This needs to be done as a matter of urgency given the legislation has now been in force for 17 months. In the interim period it should be made clear in the guidance that a statement on an accompanying computation will suffice. The guidance accompanying the CT600 should be updated to explain exactly what is acceptable to HMRC.

13. We recommend that the Company Losses Toolkit is updated to flag the requirement to those preparing the CT600.
14. Until the above recommendations are implemented, we request that HMRC publishes an assurance that having entered the correct amount in box 285, it would be accepted that a company's self-assessment has met the requirement to specify the allowance. In the meantime, we will consider further the case for amending the primary legislation to address these concerns.

APPENDIX 1

ICAEW TAX FACULTY'S TEN TENETS FOR A BETTER TAX SYSTEM

The tax system should be:

- **Statutory:** tax legislation should be enacted by statute and subject to proper democratic scrutiny by Parliament.
- **Certain:** in virtually all circumstances the application of the tax rules should be certain. It should not normally be necessary for anyone to resort to the courts in order to resolve how the rules operate in relation to his or her tax affairs.
- **Simple:** the tax rules should aim to be simple, understandable and clear in their objectives.
- **Easy to collect and to calculate:** a person's tax liability should be easy to calculate and straightforward and cheap to collect.
- **Properly targeted:** when anti-avoidance legislation is passed, due regard should be had to maintaining the simplicity and certainty of the tax system by targeting it to close specific loopholes.
- **Constant:** Changes to the underlying rules should be kept to a minimum. There should be a justifiable economic and/or social basis for any change to the tax rules and this justification should be made public and the underlying policy made clear.
- **Subject to proper consultation:** other than in exceptional circumstances, the Government should allow adequate time for both the drafting of tax legislation and full consultation on it.
- **Regularly reviewed:** the tax rules should be subject to a regular public review to determine their continuing relevance and whether their original justification has been realised. If a tax rule is no longer relevant, then it should be repealed.
- **Fair and reasonable:** the revenue authorities have a duty to exercise their powers reasonably. There should be a right of appeal to an independent tribunal against all their decisions.
- **Competitive:** tax rules and rates should be framed so as to encourage investment, capital and trade in and with the UK.

These are explained in more detail in our discussion document published in October 1999 as TAXGUIDE 4/99 (see <http://www.icaew.com/-/media/corporate/files/technical/tax/tax-news/taxguides/taxguide-0499.ashx>).