

Reforms to corporation tax loss relief

Consultation on delivery

Comments from ACCA to HM Treasury

August 2016

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The expertise of our senior members and in-house technical experts allows ACCA to provide informed opinion on a range of financial, regulatory, public sector and business areas, including: taxation (business and personal); small business; pensions; education; and corporate governance and corporate social responsibility. www.accaglobal.com

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ACCA welcomes the opportunity to comment on the proposals. The ACCA Global Forum for Tax has considered the matters raised and their views are represented in the following.

GENERAL COMMENTS:

In the light of current economic uncertainty, arising both as a result of a general slowdown in the global economy and the recent referendum vote to leave the European Union, it is of paramount importance that the UK demonstrates that it remains an attractive location for businesses. We consider that the introduction of loss restrictions and additional complexity in the management of tax attributes may discourage investment by the largest businesses at this crucial time. We would strongly urge the Government to reconsider the timing of the proposed changes to timing of loss relief, which will disproportionately affect the largest businesses whose continued stability and profitability will be essential bedrock for the future economic security of the country.

Our detailed comments in respect of specific questions within the consultation are set out below.

AREAS FOR SPECIFIC COMMENT:

Q1. Will the proposed model be effective in delivering the objective of allowing businesses greater flexibility in the use of carried-forward losses?

Yes. Losses will no longer be stranded within particular trades, which will benefit groups forced to change their business models or revise activities to reflect wider changes in the economic environment. The retention of the trade/non-trade split will to some extent reduce flexibility, and when taken in conjunction with the changes to interest relief reflecting the BEPS AP4 requirements regarding interest deductibility will add considerably to the potential complexity faced by larger groups in correctly calculating the available reliefs.

Q2. Could the calculation be made simpler or more effective?

Disregarding altogether the trade/non-trade restriction so as to allow universal offset of economic business losses could simplify the calculations to some extent, but this would need to be considered in the context of the wider policy position re trade vs non-trade

activity. Since the trade/non-trade division does not align directly with the interest restriction provisions (although for many groups their interest costs and non-trading activities may correspond directly) this would also remove a potential area of complexity where both are in play.

Q5. Is there any reason why the definition of a group for the surrender of carried-forward losses shouldn't be aligned with the existing group relief definition?

No, and to do otherwise would introduce unnecessary additional complexity.

Q6. What definition of a group should be used for the purposes of applying the £5 million allowance?

Since the object of the £5m restriction is simply to control the timing, rather than ultimate deductibility, of any loss it is perhaps not necessarily the case that many businesses would be encouraged to incur the costs and other business disruption associated with artificial group splitting simply for a short term timing advantage, especially since such splits would reduce the owners' ongoing flexibility once carried forward losses fall below the £5m mark incentivising reversal of the separation. If an alternative wider definition for the allowance is required, then relying upon the external IFRS definition would have the advantage of familiarity for a significant proportion of the groups for whom it would be relevant, and would in addition be potentially likely align with other potential disclosures which may in future be required under BEPS and similar initiatives. It would of course mean that changes to the IFRS definition might then fall to impact upon the UK tax position, and HMRC/UK government would not necessarily be in a position to have any influence over such changes. Creating a new definition based on "association" would offer a broader anti-avoidance stance, but bring with it the additional uncertainty and complexity of a purely domestic tax-only group attribute to assess.

Q8. How could the legislation be protected from abuse in a way that is simple and administrable for businesses?

Simple extension of the existing recognised rules to cover the new types of loss now in scope will be the simplest way to implement the changes without creating new uncertainties around the group's tax position. Creation of any new measures to counteract profit shifting will be a complex process, and creating a proportional and administrable rule a significant challenge at a time when HMRC and advisers' resources are already stretched.

Q9. Do you have any concerns regarding the government's proposed approach to loss-buying and trade cessation?

The retention of existing "anti-loss buying" provisions is reasonable and proportionate. The creation of new proposals to prevent the losses in a historically unsuccessful group being utilised against the profits of a successful subsidiary which it has been able to purchase however seem likely to pose significant issues for a comparatively low risk of exchequer impact.

Q10. Are there other areas of the tax system with which these rules would have a significant impact? If so, what are these, and what might the consequences of that impact be?

The interactions with the interest restriction appear most likely to impact in the scenario of group acquisitions. There is potential scope for a group with excess capacity brought forward to purchase a group holding restricted interest carried forward; the possible interactions where the interest is trading or non-trading could require detailed analysis.

Q15. To what extent could the reforms impact on the business plans of new-entrant companies?

Encouraging new investment at every level will be fundamental to the future health of the economy. ACCA would welcome the introduction of an equivalent to the Public Benefit Project Exclusion for carried forward losses. As with the interest deduction restriction proposals, this should be framed as widely as possible to maximise the incentives to engage in projects with wider benefits to society.