

10. The corporate loss restriction and the deductions allowance

10.1 The corporate loss restriction

10.1.1 Introduction

Since April 2017, companies have had huge flexibility in how they use their carried-forward losses. Where losses arise from 1 April 2017 onwards:

- companies have been able to offset them against total profits;
- the relief is no longer given automatically, so partial claims can be made; and
- group relief has been extended to carried-forward losses too.

Losses arising prior to that date which were carried forward had to be “streamed”. This meant that companies could only set those losses against future profits from the same source. If the loss-making company was part of a group, it could only carry losses forwards against its own profits.

Some types of loss are still “streamed” (see **10.3.3**).

The trade-off for this increased flexibility is that HMRC have put a cap on how much loss relief is given in any accounting period (AP) – this is what the corporate loss restriction does. It works by limiting the amount of profits, from 1 April 2017, that can be used to relieve a brought-forward loss.

Key point – cap on relief

In simple terms (though the rules are much more detailed), if a company has profits of over £5 million in an AP, it can relieve brought-forward losses up to the “maximum amount”. The maximum amount is made up of two elements, as follows:

- the deductions allowance (a maximum of £5 million) (see **10.5**); *plus*
- 50% of the “relevant profits” above its deductions allowance (see **10.7**).

Example

Tuba Ltd, which is not part of a group, made a trading loss of £8,000,000 in its year ended 31 December 2018. It had no other profits that year, so carried forward the loss. In the year ended 31 December 2019 it had total profits of £6,450,000.

If the loss restriction were not in force, it could have set the loss against its total profits, leaving £1,550,000 of the loss to carry forward to its next AP.

Instead it will have a loss restriction for the year ended 31 December 2019 of £5,725,000, whereby the maximum amount that can be offset is calculated as:

- the deductions allowance of £5 million; *plus*
- 50% of the excess: $£6,450,000 - £5,000,000 = £1,450,000 \times 50\% = £725,000$.

It will then have taxable profits of £725,000 for the year ended 31 December 2019. The balance of the loss of £2,275,000 (£8,000,000 - £5,725,000) will carry forward to the next AP.

Onerous leases

Where an onerous-lease provision has been reversed, an increased deductions allowance may be claimed (see **10.9**).

Specialist sectors

Within the legislation, there are computational rules specific to companies in the banking, gas and oil, and insurance sectors. These rules are beyond the scope of this book, and a company operating in these sectors will need specialist advice in relation to its losses.

Anti-avoidance

There is a targeted anti-avoidance rule in F(No. 2)A 2017, s. 19 which seeks to counter any arrangements intended to give a “loss-related

tax advantage” by circumventing the legislation or exploiting any shortcomings. This is covered in further detail in **Chapter 15**.

Law: F(No. 2)A 2017, s. 19; CTA 2010, Pt. 7ZA

Guidance: CTM 05010

10.1.2 Extension to capital losses carried forward

The rules were extended to capital losses carried forward by FA 2020. Where relief is claimed in APs ending on or after 1 April 2020, including APs that straddle that date, capital losses are now included in this restriction. These changes are covered in more detail at **10.10**.

Capital losses carried forward have only ever been deductible against future capital gains made by the same company, and this treatment was not altered by FA 2020. Therefore, capital losses are still “streamed” in this way.

Where a company has no chargeable income in a financial year, other than capital gains, but it has capital losses carried forward, its deductions allowance calculation is done in a completely separate way (see **10.6**).

Insolvent companies may be entitled to an additional capital gains deductions allowance (see **10.11**).

Law: CTA 2010, Pt. 7ZA; FA 2020, Sch. 4

Guidance: CTM 05000ff.; CG-App17

10.2 Important points to note

Note the following key principles:

- The restriction applies to most carried-forward losses, whether they arose before or after 1 April 2017.
- The calculations are only needed if the company or group is claiming relief for brought-forward losses in the AP (CTA 2010, s. 269ZZ(2)).
- All companies must state the amount of their deductions allowance, on the corporation tax computation, for each period for which a company wants to relieve brought-forward losses. This applies even to a standalone company that has not been in a group for any part of its AP. If no allowance is claimed, the deductions allowance is nil. The

company can then only use 50% of its profits (the “relevant profits”) to relieve the loss.

- If the company’s AP is less than 12 months, the £5 million deductions allowance is time apportioned.
- Groups must nominate one company as their representative. The deductions allowance is given for the nominated company’s AP and it is responsible for reporting how the allowance has been allocated around the group.

Terminology

The legislation is full of its own terminology and is not easy to follow. The location and section numbers allocated to it (Part 7ZA, s. 269ZA-ZZB) are not exactly user-friendly. Even HMRC’s guidance in the *Corporation Tax Manual* for the 2017 changes runs to 53 pages, spread over 26 sections!

Specialist sectors

As noted above, there are rules and restrictions specific to losses arising to companies in the gas and oil, banking, insurance and creative industries, but these are beyond the scope of this book.

Guidance: CTM 05010

10.3 How does the loss restriction work?

10.3.1 Overview

The legislation introduced the concepts of a “relevant maximum” and a “deductions allowance” (DA). Together, these limit the amounts of:

- trading profits;
- non-trading profits; and
- (from 1 April 2020), capital gains

in an AP against which certain brought-forward losses can be set.

Broadly, this means that the maximum relief for a carried-forward loss in an AP is limited to:

- 50% of the “relevant profits” (calculated separately for trading profits, non-trading profits and capital gains if there