

Change in ownership of a company- part 2 (Lecture B1173 – 14.31 minutes)

F(No.2)A 2017 increased flexibility in the use of b/fwd corporation tax losses arising on/after 1 March 2017, including:

- trading losses no longer needing to be 'streamed'
- b/fwd losses being available for group relief

However, there is lots more anti-avoidance to stop abuse of the new rules, including changes to the 'major change in nature of conduct of trade or business (MCINOCOTOB) rules.

F(No.2)A 2017 provisions

As676AA – AL apply where both the:

- the change in ownership, and
- MCINOCOTOB of the company, occur after 31 March 2017.

New legislation on changes in ownership seeks to prevent:

- Non-trading losses being carried forward against the profits of a trade which has undergone a major change in its nature or conduct, and
- Trading losses being carried forward against the profits of an investment business which has undergone a major change in nature or conduct.

In both cases, the losses concerned aren't disallowed in full; instead, they can no longer be offset against profits affected by the major change, where those profits arise within 5 years of the end of the AP in which the change in ownership occurred.

'Affected profits' are those which can fairly and reasonably be attributed to the trade or business in which there has been a major change.

The usual definition of 'major change' applies for these purposes, but is extended to include:

- a major change in the scale of any trade or business carried on, and
- beginning or ceasing to carry on a particular trade or business.

Group relief: 5-year restriction on use of losses on acquisition

Target group cannot surrender pre-acquisition carried forward losses as group relief to the acquiring group until the 5th anniversary of the end of the accounting period of Target in which the change in ownership occurs.

The aim is to prevent loss buying. There is no restriction on group relief for carried forward losses within the Target group.

In contrast, the acquiring group can surrender brought forward losses as group relief to the acquired group. However, ss676CF to CH restrict this where there has been a MCINOCOTOB within the acquired group. Losses cannot be deducted from “affected profits”, which are:

- profits arising within 5 years of the end of the AP of the acquired group in which the change of group occurred
- that can fairly & reasonably be attributed to the trade or business in which there has been a major change.

Change in ownership of company with investment business

Where there is:

- no major change in the nature or conduct of that business,
- nor significant increase in the capital of the company

the old rules still prevent brought forward non-trade losses being set against capital gains arising on assets transferred into the company within 3 years of the change in ownership. (s171 TCGA or s775 CTA 2009).

As post 31.3.17 trading losses can be carried forward against total profits, ss 676BA to BE extend these rules to brought forward trading losses. Both sets of rules now apply for 5 years post change in ownership and also apply to gains elected into Target under s171A. A similar extension prevents Buyer transferring assets to Target with the aim of sheltering gains on sale of those assets by using carried forward losses group relief surrenders from companies within Target group.

Due diligence

You should consider all these matters when valuing losses if acting for the purchaser of a company. The logical conclusion is that there is so much risk about the availability of the losses to reduce future taxable profits that no value should be attached to them (although, in the end, this may be a matter for commercial negotiation).

Also, remember that if there has already been a MCINOCOTOB in the 3 years before the acquisition, this might also cause a bar on the use of the losses of the acquired company.

Contributed by Kevin Read