

Loss carry-back (Lecture P1251 – 12.19 minutes)

Clause 18 and Schedule 2 introduce extended loss carry-back provisions for both income tax and corporation tax purposes.

Income tax

The normal provisions under which an individual can make a claim to set a trading loss sideways against their other income is s64 ITA 2007.

The extended carry back applies in relation to 2020/21 if the person is entitled to make a claim under s64 and either of the following conditions is met:

- Condition A is that the person makes a claim under s64 for relief for either or both of tax years 2019/20 and 2020/21
- Condition B is that the total income for those two years is nil or does not include any income from which a deduction could be made under a s64 claim.

The unrelieved loss will be either the amount of the loss allowable under s64 which cannot be relieved under the claim (if condition A is met) or the total loss (if condition B is met). This can be carried back and offset against previous *profits arising from the trade* in 2019/20 (assuming this has not already been dealt with under the s64 claim), 2018/19 and 2017/18, using it against later years before earlier years. The maximum amount that can be set off in 2018/19 and 2017/18 is £2,000,000.

The claim must be made by 31 January 2023.

The same provisions apply in relation to a loss made in 2021/22 except that the years all roll forward by one year and the claim has to be made by 31 January 2024.

These provisions do not apply if any of the following restrictions apply:

- S66 ITA 2007 restriction where trading is not commercial
- S67 – 70 ITA 2007 restriction on losses relating to farming and market gardening trades
- S74ZA – 74ZD ITA 2007 – losses arising in consequence of using relevant tax avoidance arrangements
- S74E ITA 2007 – restriction on losses where cash basis is used
- S75 – 79 ITA 2007 – certain losses arising from capital allowances
- S80 ITA 2007 – losses associated with ring fence trades.

The provisions equally apply to professions and vocations.

Example

An individual has income as follows:

2017/18 Trading profits £1.4m; Property income £75,000

2018/19 Trading profits £1.8m; Property income £55,000

2019/20 Trading profits £250,000; Property income £60,000

2020/21 Trading losses (£4,000,000); Property income £100,000

The losses can be offset as follows:

Utilise against income in 2020/21 and 2019/20 without any restriction = £410,000

£1.8m set off against trading income in 2018/19

Balance of £200,000 set off against trading income in 2017/18

Balance of loss of £1,590,000 will be available to carry forward and offset against future profits.

The individual would not have to claim against both 2019/20 and 2020/21 – the conditions only require for one year to be offset but with figures in this amount, it is likely that the s64 claim would be applied for both years.

Corporation tax

S37 CTA 2010 allows for trade losses to be utilised against profits of the same or earlier accounting periods but only where the previous accounting period falls wholly or partly within the period of 12 months immediately before the loss-making period. This legislation extends that to 3 years.

Whilst the policy paper issued at the time of the Budget clearly stated that the extended carry back was only against profits from the same trade, there is no reference to this in the Finance Bill.

The examples in this section therefore assume that the loss can be carried back against total profits of CY-2 (the ante-penultimate year) and CY-3 (the earliest year to which losses can be carried back).

The accounting periods to which this relates are those which end in the period beginning with 1 April 2020 and ending with 31 March 2022.

Definitions

The legislation refers to '2020 claims' and '2021 claims' as well as '2020 groups' and '2021 groups'. There is also the concept of 'de minimis' claims.

A '2020 claim' means a claim in relation to a loss incurred in an accounting period beginning with 1 April 2020 and ending with 31 March 2021; a '2021 claim' means a claim in relation to a loss incurred in an accounting period beginning with 1 April 2021 and ending with 31 March 2022.

A '2020 group' means two or more companies which, at the end of 31 March 2021, are a group within the meaning given by s269ZZB CTA 2010; 1 '2021 group' means two or more companies which, at the end of 31 March 2022, are a group within the meaning given by s269ZZB CTA 2010. This definition establishes a group via a 75% relationship.

A 'de-minimis claim' means a claim which, in total for either 2020 or 2021, is under £200,000. This limit is measured assuming that the company makes all claims available to it (e.g. capital

allowances), does not surrender any amounts as group relief, and the claim is for all the relief available to the company in respect of losses made. It is after the carry back into the previous accounting period.

Example

A company has losses before capital allowances of £750,000 in the year to 31 October 2020. It has profits of £400,000 in the previous year. In the 2020 year, it could claim capital allowances of £100,000. There is also a fellow group company that has made profits of £275,000 in the same period which could absorb group relief of that amount.

If it carries back losses to the previous year, it has remaining losses of £350,000. The capital allowances must be added which gives a figure of £450,000. If the £275,000 was surrendered as group relief this would bring us below the £200,000 threshold for a de minimis claim. However, we are not able to reduce the figure by this group relief claim so it is a non-de minimis claim.

Standalone companies

If the company is not a member of a 2020 group, any 2020 claim is only valid if the total value of 2020 extended carry-back claims made by the company is under £2,000,000. The same applies to 2021 claims if the company is not a member of a 2021 group.

Example 1

A company has a loss of £4.2m in the year to 31 December 2020. Its profits are as follows:

31 December 2019	£1.5m
31 December 2018	£800,000
31 December 2017	£1.9m

The loss can be offset against the 2019 profits, leaving £2.7m of loss available to carry back. Only £2m of this is available to carry back to 2018 and 2017, so £800,000 would be used in 2018 and the balance of £1.2m used in 2017. £700,000 is then carried forward against future profits.

Example 2

Company has the following profit/loss profile and has a 31 December year end:

	Years ended 31 December			
	2017	2018	2019	2020
Trading profit / loss	2,074,091	1,149,400	3,921,114	(7,130,210)
Other income and gains	350,328	195,098	432,120	123,245

How can the losses be used?

Years ended 31 December

	2017	2018	2019	2020	Loss tracking	
Trading profit / loss	2,074,091	1,149,400	4,353,234	-	7,130,210	
Other income and gains	350,328	195,098	432,120	123,245	-123,245	(1)
	2,424,419	1,344,498	4,785,354	123,245	-4,785,354	(2)
1. Current year relief				(123,245)	2,221,611	
2. Carry back 12 months			(4,785,354)		-1,344,498	(3)
3. Carry back (CY-2)		(1,344,498)			877,113	
4. Carry back (CY-3)*	(655,502)				-655,502	(4)
Final profits chargeable	1,768,917	0	0	0	221,611	c/fwd

CY-2 and CY-3 carry-back is limited to a total of £2,000,000 so there is a restricted set-off in 2017. The loss carried forward to later periods is £221,611.

Groups

Where a company is a member of a group, non-de minimis claims can only be made if the total claims are less than £2,000,000 being the aggregate of:

- The claim in question
- Any other claims (as appropriate) made by the company for the same year (i.e. either 2020 or 2021)
- Any claims made by other members of the group for the same year (i.e. either 2020 or 2021).

In this calculation, you have to include de minimis claims. No group cap exists if there are no claims which are non-de minimis.

A loss allocation statement has to be submitted by the group. Anti-avoidance provisions apply where a company ceases to be a member of a group with the main purpose (or one of the main purposes) being to increase the amount of relief that might be available under these provisions.

Example

A company is a member of a group with 4 other members, each has losses of less than £200,000 after amounts have been carried back to the previous year. No group cap exists as each is less than the de minimis limit.

Suppose the figures differed such that the loss after carry back was as follows:

Company A	£100,000
Company B	£200,000
Company C	£500,000
Company D	£100,000
Company E	£1,500,000

If companies' A – D claim the maximum relief, then the extended loss carry-back for Company E would be (2,000,000 – 100,000 – 200,000 – 500,000 – 100,000) £1,100,000.

Example

A group of companies has the following results with each having a year end of 31 December. All profit derives from trading activities.

	Years ended 31 December			
	2017	2018	2019	2020
A Ltd	84,342	94,278	40,150	(235,420)
B Ltd	64,902	59,293	32,632	(131,006)
C Ltd	71,454	58,344	90,164	(244,932)
D Ltd	89,231	62,782	67,344	(248,553)
E Ltd	1,435,395	1,643,988	867,343	(4,517,573)
				<u>(5,377,484)</u>

The loss available after carry-back to 2019 is as follows:

A Ltd	195,270
B Ltd	98,374
C Ltd	154,768
D Ltd	181,209
E Ltd	<u>3,650,230</u>
	<u>4,279,851</u>

For A – D, these are de minimis claims and, on initial calculation, it would appear that the maximum amount that can be carried back for E Ltd is £1,370,379 which £2,000,000 less the sum of the amounts for the other companies. However, when the figures are worked through, not all of these companies can utilise all of their carried back losses, so the amount that is actually available to carry back for E Ltd is £1,441,195.

This is the final analysis of the losses claimed for each company:

Loss claims	Years ended 31 December				Loss c/fwd	Amount	
	2017	2018	2019	Total		claimed	
A Ltd	(84,342)	(94,278)	(40,150)	(218,770)	(16,650)	(178,620)	
B Ltd	(39,081)	(59,293)	(32,632)	(131,006)	0	(98,374)	
C Ltd	(71,454)	(58,344)	(90,164)	(219,962)	(24,970)	(129,798)	
D Ltd	(89,231)	(62,782)	(67,344)	(219,357)	(29,196)	(152,013)	
E Ltd	0	(1,441,195)	(867,343)	(2,308,538)	(2,209,035)	(1,441,195)	balance
	(282,091)	(1,713,874)	(1,095,614)	(3,097,633)	(2,279,851)	(2,000,000)	

The total losses of the group (being £5,377,484) are used £1,095,614 in 2019, £2,000,000 in 2017 and 2018 and losses of £2,279,851 are carried forward.

Claims

A non-de minimis claim (so one in excess of £200,000) for 2020 cannot be made before 31 March 2021 and for 2021 cannot be made before 31 March 2022. These claims must be made in the company tax return for the accounting period in which the loss is incurred. Any earlier accounting periods which are affected will be treated as amended accordingly.