

Further guidance on extended loss carry-back claims

(Lecture B1283 – 15.47 minutes)

On 5 July 2021, HMRC published further guidance on the provisions in FA 2021 which allow extended loss carry-back claims by companies and unincorporated businesses.

Companies

A claim for relief in respect of a trading loss can only be made once the extent of the loss has been 'established'. The claim must be for an amount which is quantified at the time when the claim is made. This is usually done with the submission of a CT600 return. Claims for the extended carry-back relief must be made within two years of the end of the loss-making accounting period. Therefore, if a company suffers a trading loss for its year ended 30 September 2020 which it wishes to carry back under the FA 2021 regime against the total profits of the year ended 30 September 2018 and then against the total profits of the year ended 30 September 2017, it must make the claim by 30 September 2022.

A de minimis claim (i.e. up to a maximum of £200,000) to carry back trading losses can be made under Sch 1A TMA 1970 outside a company tax return as soon as the accounting period in which the loss arose has ended. This is subject to the proviso that the loss can be determined with a reasonable degree of accuracy. This will require sufficient information and evidence such as management accounts to be available in order to verify the validity and correctness of the loss claim.

This latest guidance includes an online link for companies and their agents to make a de minimis claim outside a tax return. The following details must be provided:

- company's unique taxpayer reference;
- company's name;
- tax adviser's agent code (if applicable);
- start and end dates of the loss-making accounting period;
- amount of the loss;
- dates of the accounting periods to which the loss is to be carried back;
- total profits of those earlier accounting periods; and
- company's management accounts for the loss-making accounting period in the form of a PDF.

Non-de minimis claims (i.e. those exceeding £200,000) must be made in a CT600 return. Such claims, if made by companies which are members of a group, are only valid if they are accompanied by a loss carry-back allocation statement (see SI 2021/704). This statement must be submitted by a nominated group company.

The group member is normally nominated by the ultimate parent company of the group. There is no need to send the nomination in to HMRC, but HMRC say that 'groups should have a nomination in place which fulfils the legislative requirements and should be able to supply this, if it is requested'.

A 2020 loss carry-back allocation statement refers to an accounting period ended in the financial year 2020. It must be submitted by 31 March 2023.

A 2021 loss carry-back allocation statement refers to an accounting period ended in the financial year 2021. It must be submitted by 31 March 2024.

Loss carry-back allocation statements must:

- be in writing;
- be signed by the appropriate person in relation to the nominated company (usually an officer of the company);
- identify the ultimate parent company of the group;
- list all the members of the 2020 or 2021 group (as appropriate);
- list all the de minimis claims made by group members (including the name of each claimant company and the claim amounts);
- state the total amount of relief given by de minimis claims; and
- list all the non-de minimis claims made by group members (including the name of each claimant company and the claim amounts).

Where there are both de minimis and non-de minimis claims, the total amount of relief given must not exceed the group cap of £2,000,000. If any changes to non-de minimis claims are required, the nominated company must notify HMRC of the changes in writing.

Unincorporated businesses

A claim for loss relief will normally be made in the businessman's tax return, but, where the claim will affect more than one tax year, a standalone claim can be made outside the tax return.

The claim must specify:

- the name of the business;
- the period for which the loss was made;
- the amount of the loss; and
- how the loss is to be used.

A standalone claim can be made as soon as the basis period in which the loss arose has ended and the loss has been calculated. Note that, unlike the position for companies, no online facility has been provided for unincorporated businesses.

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