



01 October 2018

Clare Dunne

HM Revenue and Customs

Via email

Dear Ms Dunne

Carried forward corporation tax losses: compliance requirements

I am writing to you on behalf of the Association of Taxation Technicians (ATT) regarding the changes to the treatment of carried forward corporation tax losses introduced by Finance (No 2) Act 2017. In particular, the compliance obligations which apply to all companies in connection with the restriction on the amount of brought forward losses which can be offset in any one year. This matter was also the subject of an ICAEW representation dated 11 September 2018.

The primary charitable objective of the ATT is to promote education and the study of tax administration and practice. We place a strong emphasis on the practicalities of the tax system. Our work in this area draws heavily on the experience of our members who assist thousands of businesses and individuals to comply with their taxation obligations. This letter is written with that background.

Background

Finance (No 2) Act 2017 introduced two major changes to the use of corporation tax losses, both of which are effective from 1 April 2017:

- A relaxation allowing carried forward losses to be used more flexibly (*the relaxation*).
- A restriction on the amount of brought forward losses which can be offset in any one year (*the restriction*).

Whilst all companies and groups are able to benefit from the relaxation, the availability of a £5m per annum *deductions allowance* before losses are restricted means that only the largest companies and groups should suffer a restriction. However, the restriction rules introduce new compliance obligations for companies of all sizes.

Under s279ZZ CTA 2010, if a company wishes to set brought forward losses against profits arising from 1 April 2017, they are required to specify the amount of their *deduction allowance* in their corporation tax return for the period.

This requirement applies regardless of the size of the company and must be complied with even if the company will not suffer any restriction (for example because its brought forward losses are well below £5m).

Further compliance requirements apply if a company has brought forward losses which can only be set against either trading or non-trading profits (common examples will be trading losses or non-trading loan relationship deficits which arose before the relaxation took effect on 1 April 2017). Where this is the case the company will need to identify a corresponding amount of their *deduction allowance* as being a *trading profits deduction allowance* or *non-trading profits deduction allowance* as appropriate and also specify this amount in their return.

As the legislation currently stands, if a company fails to specify the amount of their *trading profits deduction allowance* or *non-trading profits deduction allowance* (as appropriate) in their corporation tax return then only 50% of their profits can be offset by brought forward losses, even if these fall well below the level of the *deduction allowance*. Our understanding is that the general *deduction allowance* must still be entered on the return, but there is no statutory loss of the allowance where this doesn't happen.

In addition to the requirement to state the *deduction allowance* (and where necessary the *trading profits deduction allowance* or *non-trading profits deduction allowance*) further administrative requirements apply if a company is a member of a group containing at least one other company within the charge to corporation tax:

- A group company has to be nominated as responsible for allocating the single £5m per annum *group deduction allowance* amongst the group members.
- The nominated company has to submit a *group allowance allocation* statement each accounting period.

These requirements apply to all groups that wish to offset brought forward losses from April 2017, regardless of their size.

Matters identified

Many small companies and groups with carried forward losses of less than £5m will have concluded, quite correctly, that they will not suffer a restriction under these new rules. However, we are concerned that many such companies, and their agents, will be unaware that they are still required to specify their *deduction allowance* (and *trading profits deduction allowance* or *non-trading profits deduction allowance* if appropriate) on their return.

We are also concerned that smaller groups and those with very simple structures (such as a holding company with a single trading subsidiary) may be unaware of the requirement to nominate a group company and submit a group allowance allocation statement.

We note that the CT600 has not yet been updated to reflect these compliance requirements, and that there is no dedicated box or white space area to state the required *deduction allowances* or submit the information required in the *group allowance allocation statement*. In addition, the guidance accompanying the CT600 does not provide any further information as to where these

figures should be provided, and the Company Losses Toolkit 2017-18 does not contain any specific check box relating to these requirements.

Given this lack of guidance, and the perception that the restriction rules are only an issue for the largest companies and groups, we are concerned that many small companies could unwittingly fail to comply with the compliance requirements which could, under the current wording of the law, lead to their ability to offset losses being restricted.

Suggested remedy

Ideally, we would like to see an amendment made to the legislation introduced by Finance (No 2) Act 2017 to remove the compliance obligations for those companies and groups who will not suffer a restriction of brought forward losses. However, we appreciate that such a legislative amendment may not be possible, and would in any event take time to both design and deliver.

As the first corporation tax returns under the restriction rules are currently in the process of being prepared and filed, we believe that action needs to be taken now to address this issue. As a starting point, we would be grateful if HMRC could confirm to us that:

- Stating the required *deduction allowances* in the accompanying tax computation will meet HMRC's requirements; and
- The information required for the *group allowance allocation statement* can also be included in the tax computation of the nominated company.

To ensure smaller companies and groups are aware of their obligations, we would also recommend that the following actions be considered

- Updating HMRC's guidance on the restriction to make the requirement for all companies to state their *deduction allowances* more prominent.
- Updating the Company Losses toolkit to include check boxes to confirm that
 - the relevant *deduction allowances* have been stated; and
 - where there is a group, a company has been nominated that will prepare and submit the *group allowance allocation statement*.
- Updating the CT600 guidance to highlight the compliance requirements more clearly.

In the medium term, it may also be desirable to amend the CT600 so that it provides a dedicated space to specify the required *deduction allowances*. For groups, it may also be helpful if HMRC could provide a template *group allowance allocation statement* (this could potentially be included as a supplementary page to the CT600 return).

Should you wish to discuss any of the issues raised in this letter further please contact our relevant Technical Officer, Emma Rawson (erawson@att.org.uk, mobile 07773 087111).

Yours faithfully

The Association of Taxation Technicians

The Association is a charity and the leading professional body for those providing UK tax compliance services. Our primary charitable objective is to promote education and the study of tax administration and practice. One of our key aims is to provide an appropriate qualification for individuals who undertake tax compliance work. Drawing on our members' practical experience and knowledge, we contribute to consultations on the development of the UK tax system and seek to ensure that, for the general public, it is workable and as fair as possible.

Our members are qualified by examination and practical experience. They commit to the highest standards of professional conduct and ensure that their tax knowledge is constantly kept up to date. Members may be found in private practice, commerce and industry, government and academia.

The Association has over 8,500 members and Fellows together with over 6,000 students. Members and Fellows use the practising title of 'Taxation Technician' or 'Taxation Technician (Fellow)' and the designatory letters 'ATT' and 'ATT (Fellow)' respectively.