



CORPORATE CAPITAL LOSS RESTRICTION – CONSULTATION ON DELIVERY

Response by Association of Taxation Technicians

1 Introduction

- 1.1 The Association of Taxation Technicians (ATT) is pleased to have the opportunity to respond to the HMRC consultation document *Corporate Capital Loss Restriction – consultation on delivery* (‘the Consultation’) issued on 29 October 2018¹.
- 1.2 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 response is written with that background.
- 1.3 In this response we have focused primarily on the administrative impact of the proposals in the Consultation, in particular with respect to those smaller companies which are likely to suffer no financial restriction because of the availability of the £5m *deductions allowance*. We have therefore restricted our comments to addressing Question 4 in the Consultation – “*What could be done to reduce the administrative requirements of this restriction?*”.
- 1.4 In summary, we do not want to see the Consultation proposals result in additional compliance requirements for companies that would otherwise be financially unaffected by them. We have previously engaged with HMRC regarding the compliance obligations for businesses of all sizes under the current Corporate Income Loss Restriction (CILR) rules, and are pleased to see that more guidance has been released to raise awareness of these obligations and assist companies in complying with them. However, we believe that the extension of the loss restriction rules to capital losses provides a good opportunity to revisit this issue and simplify the compliance obligations associated with those rules, in particular for those small and medium sized companies and groups that are not their intended target.
- 1.5 Section 2 of our response provides a short summary of the current compliance obligations under the CILR rules and our interaction with HMRC to date in this area. In Section 3 we go on to consider the impact that the Consultation proposals may have with respect to compliance burdens, and suggest ways to alleviate these for those companies who would not otherwise be financially affected by the proposals.
- 1.6 We would be pleased to discuss any aspect of this response further and contact details can be found in Section 4.

¹ <https://www.gov.uk/government/consultations/corporate-capital-loss-restriction-consultation-on-delivery>

2 Current administrative requirements under the Corporate Income Loss Restriction (CILR) rules

- 2.1 Under the current CILR rules, if a company wishes to set brought forward income losses against profits arising from 1 April 2017, they are required to specify the amount of their *deductions 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).
- 2.2 Further compliance requirements apply if a company has brought forward income 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 1 April 2017). Where this is the case, the company needs to identify a corresponding amount of their *deductions allowance* as being a *trading profits deductions allowance* or *non-trading profits deductions allowance* as appropriate and also specify this amount in their return.
- 2.3 As the legislation currently stands, if a company fails to specify the amount of their *trading profits deductions allowance* or *non-trading profits deductions allowance* (as appropriate) in their corporation tax return, only 50% of their profits can be offset by brought forward losses, even if these profits fall well below the level of the overall *deductions allowance*. Our understanding is that the general *deductions allowance* must still be entered on the return although there is no statutory loss of the allowance where this doesn't happen.
- 2.4 In a letter of 1 October 2018 to HMRC (the 'October letter' - see [here](#)) we expressed concern that many small companies and groups would be unaware of these compliance obligations. We are happy to note that HMRC have since produced draft guidance to highlight the requirements, and updated other guidance (including the company losses toolkit) to give them more prominence.

3 The Consultation proposals

- 3.1 The Consultation proposes to extend the CILR rules to include corporate capital losses. Under these proposals there will be a single £5m per annum *deductions allowance* to cover all types of corporate losses (both income and capital), with companies able to allocate that allowance between the capital loss restriction and the CILR as they see fit.
- 3.2 The Consultation states at Section 2.8 that the Government wants to ensure that the restriction only impacts companies making substantial capital gains and/or profits. However, we are concerned that the Consultation proposals could introduce additional compliance obligations for *all* companies. This would be the case if, for example, any company (regardless of the level of their profits) was required to allocate their *deductions allowance* between the capital loss restriction and CILR and state the relevant portions in their return.
- 3.3 The Consultation also states in its Executive Summary that the availability of the £5m *deductions allowance* will ensure that over 99% of companies remain financially unaffected by the combined restrictions on income and capital losses. However, this will not be the case if the requirement to allocate the *deductions allowance* between capital losses and the CILR and reflect that allocation in the return is modelled on that for the *trading profits deductions allowance* and *non-trading profits*

deductions allowance. As set out in Section 2.3 above, under the current CILR legislation, failure to state the *trading profits deductions allowance* or *non-trading profits deductions allowance* in the company's return where required can result in losses being restricted, even when profits fall below the level of the overall *deductions allowance*. Following this approach for allocation of the *deductions allowance* between capital losses and the CILR would increase the risk of smaller companies suffering a restriction merely due to a compliance failure.

3.4 In our October letter, we noted that we would like to see an amendment made to the CILR legislation to remove the compliance obligations for those companies who will not in practice suffer a restriction of brought forward losses. However, we recognised that such a legislative amendment might not be possible at that time. We believe that the drafting of new legislation to extend the CILR to corporate capital losses provides an excellent opportunity to revisit this proposal, and ensure that the loss restriction rules truly have no impact on smaller companies.

3.5 We recommend that, when introducing the new corporate capital loss restriction:

- A company should only be required to report the allocation of its *deductions allowance* between capital losses and the CILR in its return if its combined profits and gains exceed the overall level of the *deductions allowance* for the period; and
- The existing CILR legislation should be amended to make it clear that companies are not required to state any amounts in their return in relation to the CILR where their profits fall below the level of their *deductions allowance* for the period.

Taken together, these suggestions would remove the risk of small companies inadvertently failing to comply with a compliance requirement and suffering a financial disadvantage that would appear to go against the Government's stated policy intention.

3.6 If this legislative approach is not taken, it would be helpful for the CT600 to be updated to provide a dedicated space for stating all of the required *deductions allowances* and allocations under the CILR rules and the new corporate capital loss restriction. This could involve either inserting new boxes into the main body of the CT600, or introducing new supplementary pages. The requirement to include such information in the CT600 would act as a highly visible prompt and reminder to companies that they need to supply these figures, and hopefully reduce the risk of them suffering an unintended restriction on their ability to claim loss relief.

4 Contact details

4.1 We would be pleased to join in any discussion relating to this consultation. Should you wish to discuss any aspect of this response, please contact our relevant Technical Officer, Emma Rawson (erawson@att.org.uk, mobile 07773 087111).

5 Note

5.1 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 9,000 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.