Carried forward corporation tax losses: compliance requirements

Large Corporate **Management of taxes** **OMB**

01 November 2018

The ATT and CIOT have written to HMRC to ask for more guidance on compliance obligations which apply to all companies (regardless of size) looking to set off carried forward losses from April 2017.

New restrictions on the amount of brought forward corporation tax losses which can be offset in any one year took effect from 1 April 2017. 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 in practice. However, the restriction rules introduce new compliance obligations for companies of all sizes.

Importantly, if a company wishes to set brought forward losses against profits arising from 1 April 2017 they need to do the following:

- Specify the amount of their deduction allowance in the corporation tax return for the period.
- If they have brought forward losses which can only be set against either trading or non-trading profits (for example losses which arose before 1 April 2017), identify a corresponding amount of their deduction allowance as being a *trading profits deduction allowance or non-trading profits deduction allowance*.

These requirements apply regardless of the size of the company and must be complied with even if the company will not suffer any restriction (for example because it’s brought forward losses are well below £5m).

Failure to state the *trading profits deduction allowance or non-trading profits deduction allowance* where needed can result in only 50% of the company’s profits being offset by brought forward losses.

Further compliance 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.

To date, limited guidance has been issued to highlight the requirements, and identify how the required information should be supplied to HMRC. In particular, the CT600 does not have a dedicated box or white space area to state the required *deduction allowances* or submit the information required in the *group allowance allocation statement*.

These points were addressed during a Talking Points session on the new loss relief rules first aired in May 2018 and now available on GOV.UK. During this session, HMRC confirmed in responses to questions that:

- The legislation does not state a specific place on the return where the company must specify the amount of the deductions allowance available to it, just that a company should state the amount available to it on the return. This information should make up part of the CT computations that are submitted as part of the return. Companies need to do this even if their deductions allowance covers the whole of their profits so that the restriction does not affect the amount of relief they can get; and
- That a group does not have to submit the group nomination, although this must be available if requested. In addition, as a practical point, the nominated company must have been appointed in order for it to be able to produce the required group allowances allocation statement. This statement can be submitted as a pdf attachment to the return of the nominated company.

However, concerns have been raised by members of the ATT and CIOT that, given the perception that the restriction rules are only an issue for the largest companies and groups, many smaller companies and groups could unwittingly fail to comply with these compliance requirements which could lead to their ability to offset losses being restricted.

Both bodies have therefore written to HMRC to ask for more guidance for affected companies, including:

- Updating HMRC’s guidance on the restriction and the CT600 guidance to make the compliance requirements more prominent.
- Updating the Company Losses Toolkit to include check boxes relating to these requirements.

The ATT also note in their response that, in the medium term, it may 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).

A technical article providing more information on the compliance requirements surrounding the corporation tax loss relief rules can be found on the ATT website.

The ATT letter can be found on the ATT website.

The CIOT letter can be found on the CIOT website.