Corporate capital loss restriction: consultation on delivery

Large Corporate **OMB**

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The ATT and CIOT have responded to a consultation on including carried forward capital losses in the corporate loss restriction

At Budget 2018 the Chancellor announced that the corporate income loss restriction (CILR) introduced in April 2017 would be extended to include carried forward capital losses from 1 April 2020. A consultation Corporate Capital Loss Restriction: Consultation on delivery was subsequently launched to consider how to implement this change, whether any specific exemptions were needed and if there were any potentially unintended consequences.

The ATT's response to this consultation focuses primarily on the administrative impact of the proposals, 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.

In summary, the ATT do not want to see the proposals resulting in additional compliance burdens for companies that would otherwise be financially unaffected by them. The ATT and CIOT have previously engaged with HMRC regarding the compliance obligations for businesses of all sizes under the current CILR rules and are pleased that more guidance has now been released to raise awareness of these obligations and assist companies in complying with them. However, the ATT believes that the extension of the rules to include capital losses provides a good opportunity to revisit this issue and simplify compliance obligations, in particular for those small and medium sized companies and groups that are not their intended target. This could be achieved through legislative changes, or by updating the CT600 to provide a dedicated space for stating all of the required deductions allowances and allocations under both the current and expanded rules.

In its response, the CIOT also noted that it is intended that the majority of companies (99%) will be unaffected by the restriction on account of the £5m annual allowance. But that, whilst this may be true in practice, as the consultation document acknowledges, it is only the case that 99% of companies will be financially unaffected; the compliance obligations will apply to all companies regardless of size. It is important, therefore, that the compliance obligations arising as a result of this new restriction are appropriately publicised and described in guidance and toolkits to ensure that there is awareness of the new obligations amongst all companies.

Whilst recognising that the consultation was focussing on the technicalities of implementation of the restriction, rather than the proposal to introduce the restriction itself, the CIOT nonetheless took the opportunity to comment on the policy rationale set out in the consultation document. In particular we noted that the restriction in respect of capital losses is presented as an alignment of the rules, following on from the CILR. However, in our view, there are substantial differences between the nature of income and capital profits and gains, and income losses and capital losses, which do not make an extension of the CILR to capital losses necessarily logical. In addition, when it was introduced, the CILR came with an upside for taxpayers – being the more flexible use of carried-forward income losses within a group. There is no equivalent upside being proposed in respect of the capital loss restriction. Although the proposals note that there is already the ability to transfer capital losses within a group, because capital gains are rare, and a business does not necessarily know when the next one will arise, the practical effect of this flexibility is limited.

The CIOT also suggested that HMRC considers the level of the £5m annual allowance, which will be less effective at mitigating the financial effects on groups now that it applies in respect of capital gains as well as income profits. We suggested that consideration should be given to increasing it. In addition, the allowance will get eroded over time by inflation; consideration should be given to indexing the annual allowance to counteract this.

ATT’s full response can be found on the ATT website and the CIOT’s on the CIOT website.