

FINANCE ACT 2015

EXPLANATORY NOTES

INTRODUCTION

Section 33 and Schedule 3: Tax Avoidance Involving Carried-Forward Losses

Summary

1. This section and Schedule introduce an anti-avoidance rule to prevent companies from obtaining a corporation tax advantage by entering contrived arrangements to convert certain carried-forward reliefs into more versatile in-year deductions. The rule will apply to use of reliefs in accounting periods beginning on or after 18 March 2015, with apportionment of relief for accounting periods straddling that date.

Details of the Section

2. [Section 33](#) introduces Schedule 3, which is made up of two Parts.

Details of the Schedule

Part 1: New Part 14B Corporation Tax Act (CTA) 2010

3. Section 730E gives an overview of the new Part.
4. Section 730F defines a “relevant carried forward loss” for the purposes of the Part as any one of three types of corporation tax relief that has been carried forward to the company’s current accounting period. The reliefs included are:
 - trading losses carried forward under section 45 CTA 2010;
 - non-trading deficits on loan relationships carried forward under section 457 Corporation Tax Act (CTA) 2009; and
 - management expenses carried forward under section 1223(2) of CTA 2009 or amounts treated as management expenses by section 63(3) of CTA 2010.
5. Section 730G is the operative section within the Part, defining the situations to which the Part applies and what happens when it does.
6. This section relies on various definitions:
 - “Relevant profits” are defined within subsection 730G(1) and are the profits arising from an arrangement;
 - “Tax arrangements” are defined within subsection 730G(1) and are the arrangements considered under the conditions;
 - “Relevant company” is defined within subsection 730G(1) and is the company considered under the conditions;
 - “Relevant carried forward losses” is defined in section 730F;

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- “Connected” takes the meaning within section 1122 CTA 2010;
 - “Deductible amount” is defined in section 730H;
 - “Corporation tax advantage” is defined in section 730H;
 - “Tax value” is defined in subsection 730G(7); and
 - “Non-tax value” is defined in subsection 730G(8).
7. Subsections 730G(2) to (9) give five conditions, all of which must be met for the rule to apply.
 8. Subsection 730G(2): Condition A is that because of the tax arrangements relevant profits arise to the company against which one or more relevant carried-forward losses would be available if the anti-avoidance rule did not apply.
 9. Subsection 730G(3): Condition B is that because of the tax arrangements the relevant company or a company connected with it will bring a deductible amount into account.
 10. Subsection 730G(4) and (5): Condition C is that the main purpose, or one of the main purposes, of the tax arrangements was to secure a corporation tax advantage for the company, or the company taken with any other connected companies, involving both the entitlement to the deductible amount and the use of relevant carried-forward losses.
 11. Subsection 730G(6): Condition D is that it is reasonable to assume that when the tax arrangements were entered into the tax value of the arrangements was expected to be greater than the non-tax value. This an objective test to ensure that the rules will only apply to arrangements entered into predominantly for their tax value.
 12. Subsection 730G(7): defines tax value as both the corporation tax advantage and any other economic benefits derived from the corporation tax advantage.
 13. Subsection 730G(8): defines the non-tax value as any economic value derived from the arrangements apart from that falling in subsection 730G(7).
 14. Subsection 730G(9): Condition E gives priority to the targeted anti-avoidance rule in Part 7A of CTA 2010 (Restrictions applying to certain deductions made by banking companies). Where section 269CK in that Part applies then this section will not.
 15. Subsection 730G(10) defines the effect where all the conditions are met: the company will be unable to use relevant carried-forward losses against any relevant profits arising from the tax arrangements.
 16. Subsection 730H(1) gives definitions for the Part.
 17. Subsection 730H(2) clarifies that bringing a deduction into account in section 730G may be taken to mean that the deduction reduces a profit, relieves a profit, or increases a loss.

Part 2: Commencement for Part 14B

18. Where the conditions apply and use of relevant carried-forward amounts is restricted, this will take effect for accounting periods beginning on or after 18 March 2015.
19. Where the rules apply to a company with an accounting period straddling 18 March 2015, that period will be treated as two separate accounting periods for the purposes of this Part, and the restriction on relevant carried-forward amounts will apply in the split period treated as commencing 18 March 2015. The default is a split on a time basis, unless that basis is unjust or unreasonable.
20. This treatment will split any loss for the whole accounting period into a loss in the two periods, or any profit for the whole accounting period into a profit in the two periods.

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21. The split operates at the level of amounts brought into account for the purposes of calculating the taxable total profits of the company. Hence if the restriction in subsection 730G(10) applies within a period straddling 18 March 2015:
 - where carried-forward losses or non-trading loan relationship deficits are restricted, the amount of total profits calculated in section 4(3) of CTA 2010 will be higher, increasing the amount of total profits against which relief can be given at Step 2 of section 4(2) in the calculation of taxable total profits; and
 - where management expenses are restricted, which are the first of all reliefs against total profits, the balance of total profits left available for relief at Step 2 of section 4(2) will be higher in the calculation of total profits; and
 - these increased amounts will only be reflected in the period deemed to commence on 18 March 2015.
22. The split applies only so far as it is necessary for the purposes of this Part.
23. The Part makes no mention regarding when arrangements may have been entered into, so the rules will apply regardless of when this was.

Background Note

24. This new Part was announced for the first time at Budget 2015.
25. The government has introduced this anti-avoidance rule to counteract the advantage for companies of entering into contrived arrangements to circumvent:
 - the carry-forward rules for the relevant carried-forward reliefs, which limit the way in which relief can be given; and
 - the group relief rules in Part 5 of CTA 2010, which only allow relief to be surrendered by a group company against profits arising in the same overlapping period, and not the surrender of relief that has been carried-forward.
26. It is not intended to catch tax planning to make efficient use of relief available to companies within the group, and this is measured through the objective test in condition D in section 730G.