

SCHEDULES

SCHEDULE 3

Section 33

TAX AVOIDANCE INVOLVING CARRIED-FORWARD LOSSES

PART 1

AMENDMENTS OF CTA 2010

1 In CTA 2010, after Part 14A insert—

“PART 14B

TAX AVOIDANCE INVOLVING CARRIED-FORWARD LOSSES

730E Overview

- (1) This Part makes provision restricting the circumstances in which a company may make a deduction in respect of a relevant carried-forward loss.
- (2) For the meaning of “relevant carried-forward loss”, see section 730F.

730F Meaning of “relevant carried-forward loss”

- (1) In this Part “relevant carried-forward loss” means any of the following—
 - (a) a carried-forward trading loss (see subsection (2)),
 - (b) a carried-forward non-trading deficit (see subsection (3)),
 - (c) any carried-forward management expenses (see subsection (4)).
- (2) “Carried-forward trading loss”, in relation to a company and an accounting period, means a loss in a trade of the company which is carried forward from a previous accounting period under section 45 (carry forward of trade loss against subsequent trade profits).
- (3) “Carried-forward non-trading deficit”, in relation to a company and an accounting period, means a non-trading deficit which the company has from its loan relationships under section 301(6) of CTA 2009 and which is carried forward from a previous accounting period under section 457 of that Act (carry forward of deficits to accounting periods after deficit period).
- (4) “Carried-forward management expenses”, in relation to a company and an accounting period, means—
 - (a) any amounts which—
 - (i) fall within subsection (2) of section 1223 of CTA 2009 (carrying forward expenses of management and other amounts), and

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- (ii) are treated by subsection (3) of that section as expenses of management deductible for the period, and
- (b) any amounts which are treated by section 63(3) (carrying forward certain losses made by company with investment business which ceases to carry on UK property business) as expenses of management deductible for the period for the purposes of Chapter 2 of Part 16 of CTA 2009.

730G Disallowance of deductions for relevant carried-forward losses

- (1) This section applies if conditions A to E are met.
- (2) Condition A is that—
 - (a) for the purposes of corporation tax a company has profits (“relevant profits”) for an accounting period,
 - (b) the relevant profits arise to the company as a result of any arrangements (“the tax arrangements”), and
 - (c) in the absence of this section the company (“the relevant company”) would, for corporation tax purposes, be entitled to deduct from the relevant profits for the period an amount in respect of any relevant carried-forward losses.
- (3) Condition B is that—
 - (a) the relevant company, or a company connected with that company, brings a deductible amount into account as a deduction for an accounting period, and
 - (b) it is reasonable to assume that neither the company, nor any company connected with it, would have brought that amount into account as a deduction for that period but for the tax arrangements.
- (4) Condition C is that the main purpose, or one of the main purposes, of the tax arrangements is to secure a relevant corporation tax advantage—
 - (a) for the relevant company, or
 - (b) if there are any companies connected with that company, for the relevant company and those connected companies (taken together).
- (5) In this section “relevant corporation tax advantage” means a corporation tax advantage involving—
 - (a) the deductible amount mentioned in subsection (3), and
 - (b) the deduction of any relevant carried-forward losses from the relevant profits.
- (6) Condition D is that, at the time when the tax arrangements were entered into, it would have been reasonable to assume that the tax value of the tax arrangements would be greater than the non-tax value of the tax arrangements.
- (7) The “tax value” of the tax arrangements is the total value of—
 - (a) the relevant corporation tax advantage, and
 - (b) any other economic benefits derived by—
 - (i) the relevant company, or

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- (ii) if there are any companies connected with that company, the relevant company and those connected companies (taken together),
as a result of securing the relevant corporation tax advantage.
- (8) The “non-tax value” of the tax arrangements is the total value of any economic benefits, other than those falling within subsection (7)(a) or (b), derived by—
- (a) the relevant company, or
 - (b) if there are any companies connected with that company, the relevant company and those connected companies (taken together),
- as a result of the tax arrangements.
- (9) Condition E is that the tax arrangements are not arrangements in relation to which section 269CK (banking companies: profits arising from tax arrangements to be disregarded) applies.
- (10) If this section applies, the relevant company is not entitled to deduct from the relevant profits any amount in respect of the relevant carried-forward losses.

730H Interpretation of section 730G

- (1) In section 730G—
- “arrangements” includes any agreement, understanding, scheme, transaction or series of transactions (whether or not legally enforceable);
- “corporation tax advantage” means—
- (a) a relief from corporation tax or increased relief from corporation tax,
 - (b) a repayment of corporation tax or increased repayment of corporation tax,
 - (c) the avoidance or reduction of a charge to corporation tax or an assessment to corporation tax,
 - (d) the avoidance of a possible assessment to corporation tax, or
 - (e) the deferral of a payment of corporation tax or advancement of a repayment of corporation tax;
- “deductible amount” means—
- (a) an expense of a trade, other than an amount treated as such an expense by section 450(a) of CAA 2001 (research and development allowances treated as expenses in calculating profits of a trade),
 - (b) an expense of a UK property business or an overseas property business,
 - (c) an expense of management of a company’s investment business within the meaning of section 1219 of CTA 2009,
 - (d) a non-trading debit within the meaning of Parts 5 and 6 of CTA 2009 (loan relationships and derivative contracts) (see section 301(2) of that Act), or
 - (e) a non-trading debit within the meaning of Part 8 of CTA 2009 (intangible fixed assets) (see section 746 of that Act),

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but does not include any amount that has been taken into account in determining RTWDV within the meaning of Chapter 16A of Part 2 of CAA 2001 (restrictions on allowance buying) (see section 212K of that Act);

“relevant carried-forward loss” has the meaning given by section 730F.

(2) References in section 730G to bringing an amount into account “as a deduction” in any period are to bringing it into account as a deduction in that period—

- (a) in calculating profits, losses or other amounts for corporation tax purposes, or
- (b) from profits or other amounts chargeable to corporation tax.”

2 In section 1 of CTA 2010 (overview of Act), in subsection (4), after paragraph (aa) insert—

“(ab) carried-forward losses (see Part 14B),”.

3 In Schedule 4 to CTA 2010 (index of defined expressions), at the appropriate place insert—

“relevant carried-forward loss (in Part 14B | section 730F”.

PART 2

COMMENCEMENT

4 (1) The amendments made by this Schedule have effect for the purposes of calculating the taxable total profits of companies for accounting periods beginning on or after 18 March 2015.

(2) Sub-paragraph (3) applies where a company has an accounting period beginning before 18 March 2015 and ending on or after that date (“the straddling period”).

(3) For the purposes of Part 14B of CTA 2010—

- (a) so much of the straddling period as falls before 18 March 2015, and so much of that period as falls on or after that date, are treated as separate accounting periods, and
- (b) any amounts brought into account for the purposes of calculating the taxable total profits of the company for the straddling period are apportioned to the two separate accounting periods—
 - (i) in accordance with section 1172 of CTA 2010 (time basis), or
 - (ii) if that method would produce a result that is unjust or unreasonable, on a just and reasonable basis.