

CORPORATION TAX ACT 2009

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 5: Loan Relationships

Overview

Chapter 16: Non-trading deficits

Overview

1303. This Chapter provides the rules for deficits on loan relationships which are not used for the company's trade.

Section 456: Introduction to Chapter

1304. This section provides a general introduction to the Chapter. It is based on section 83(1) of, and paragraph 5 of Schedule 8 to, FA 1996.

Section 457: Basic rule for deficits: carry forward to accounting periods after deficit period

1305. This section provides that deficits which are neither surrendered as group relief nor set-off against profits of the loss period or earlier periods are carried forward and set against the non-trading profits of the following accounting period. It is based on section 83(3A) of, and paragraph 4(1) to (3) and (6) of Schedule 8 to, FA 1996.

Section 458: Claim to carry forward deficit to later accounting periods

1306. This section allows a company to make a claim to carry forward the deficit from the period in which it arose without the need to set it against non-trading profits under section 457. It is based on paragraph 4(3) to (5) of Schedule 9 to FA 1996.

1307. The deficit is then treated as if it arose in the "first later period" and falls to be carried forward to the subsequent period (ie it cannot be set against total profits of that first later accounting period). This rule also applies where no claim is made but the deficit cannot be set against non-trading profits of the first subsequent period.

Section 459: Claim to set off deficit against profits of deficit period or earlier periods

1308. This section allows a company (unless it is a charity) to claim that deficits which have not been surrendered as group relief may be set off against other profits of the deficit period or carried back against profits from loan relationships in an earlier accounting period. It is based on section 83(2) and (5) of FA 1996.

1309. Section 83(2)(a) of FA 1996 (set-off against other profits of the deficit period) allows the deficit to be set off against "any profits....(of whatever description)". "Profits of

any description” are the “total profits” in section 9(3) of ICTA and this is reflected in *subsection (1)(a)*.

1310. Section 83(2)(c) of FA 1996 (set-off carried back to earlier periods) refers only to set-off “against profits”. Paragraph 3(4) of Schedule 8 to FA 1996 makes it clear that the profits in section 83(2)(c) are only profits on non-trading loan relationships. This restriction has been brought out in *subsection (1)(b)*. Full details of the profits against which a deficit can be set under subsection (1)(b) are given in section 463 (signposted in *subsection (6)*).
1311. Section 83(5) of FA 1996 has been rewritten in *subsection (3)* and excludes charities from making a claim under subsection (1) of this section. Before its repeal in FA 2002 section 83(2)(b) of FA 1996 allowed deficits to be surrendered as group relief. Section 83(5) was not consequentially amended when section 83(2)(b) was repealed and continues to refer to group relief.
1312. The reference to group relief is unnecessary since section 403(2) of ICTA, which allows non-trading deficits for the purposes of group relief, only provides for deficits to which section 83 of FA 1996 applies (see section 403ZC of ICTA). So all that is necessary to prevent the deficit of a charitable company from being surrendered as group relief is to provide that claims under this section may not be made in respect of the deficits of a charitable company and this is what subsection (3) does.

Section 460: Time limits and procedure for claims under section 459(1)

1313. This section provides the time limit for a claim under section 459. It is based on section 83(6) to (8) of FA 1996.
1314. *Subsection (1)(b)* rewrites “the Board” as “an officer of Revenue and Customs”. See *Change 1* in Annex 1.

Section 461: Claim to set off deficit against other profits for the deficit period

1315. This section provides that, following a claim under section 459(1), the deficit is set off against the profits identified in the claim but after trade losses and before certain other reliefs. It is based on paragraph 1(1) to (4) of Schedule 8 to FA 1996.
1316. Although the set-off against profits of the deficit period is against total profits, the general rule in *subsection (2)* is that the set-off is against the profits of the company identified in the claim. In the figure of total profits any management expenses will already have been deducted under section 1219. The profits identified in the claim will therefore be after management expenses. If the company has more than one source of income together with a reduction for management expenses, an officer of Revenue and Customs will agree the amount of income specified in the claim on a just and reasonable basis.

Section 462: Claim to carry back deficit to earlier accounting periods

1317. This section explains how a claim to carry back a deficit to an earlier period under section 459(1)(b) applies, allowing the deficit to be set against profits of later accounting periods before earlier ones. It is based on paragraph 3(1) to (3) of Schedule 8 to FA 1996.
1318. *Subsection (2)* does not rewrite paragraph 3(2)(a)(ii) of Schedule 8 to FA 1996, which refers to section 83(4) of FA 1996, as section 83(4) has been repealed.

Section 463: Profits available for relief under section 462

1319. This section sets out which profits may be reduced by a deficit carried back against profits of an earlier period under section 459. It is based on paragraph 3(4) to (7) of Schedule 8 to FA 1996.

*These notes refer to the Corporation Tax Act 2009
(c.4) which received Royal Assent on 26 March 2009*

1320. The reliefs in *subsection (5)* are set against the profits before the apportionment required by *subsection (3)* to give the “amount available for relief”.