



# Corporation Tax Act 2010

## 2010 CHAPTER 4

### [<sup>F1</sup>PART 5A

#### GROUP RELIEF FOR CARRIED-FORWARD LOSSES

### [<sup>F1</sup>CHAPTER 2

#### SURRENDER OF COMPANY'S CARRIED-FORWARD LOSSES ETC

##### Textual Amendments

- F1** Pt. 5A inserted (with effect in accordance with Sch. 4 para. 190 of the amending Act) by [Finance \(No. 2\) Act 2017 \(c. 32\), Sch. 4 para. 23](#)

#### **188BA Overview of Chapter**

- (1) This Chapter allows a company to surrender losses and other amounts that have been carried forward to an accounting period of the company.
- (2) Section 188BB sets out the basic provisions about the surrendering of losses and other amounts.
- (3) Sections 188BC to 188BJ place restrictions on the surrendering of losses and other amounts.

#### **188BB Surrender of carried-forward losses and other amounts**

- (1) Subsection (2) applies if—
  - (a) a loss or other amount is carried forward to an accounting period of a company under any of the following provisions—
    - (i) section 463G(6) of CTA 2009 (carry forward of post-1 April 2017 non-trading deficit from loan relationships);

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- (ii) section 753(3) of that Act (carry forward of non-trading loss on intangible fixed assets);
  - (iii) section 1223 of that Act (carry forward of expenses of management of investment business);
  - (iv) section 45A(4) of this Act (carry forward of post-1 April 2017 trade loss);
  - (v) sections 62(5)(a) and 63(3)(a) of this Act (carry forward of loss made in UK property business); or
  - (b) section 303C of this Act (excess carried forward non-decommissioning losses of ring fence trade: relief against total profits) applies in relation to an amount.
- (2) The company may surrender the loss or other amount under this Chapter so far as the loss or other amount is eligible for corporation tax relief (apart from this Part).
- (3) Subsection (4) applies if any of a BLAGAB trade loss made by an insurance company for an accounting period is carried forward to an accounting period of the company (“the later period”) under section 124A(2) or 124C(3) of FA 2012.
- (4) The company may surrender the remaining carried forward amount under this Chapter so far as that amount is eligible for corporation tax relief (apart from this Part).
- (5) In subsection (4) “the remaining carried forward amount” means so much of the amount carried forward (as mentioned in subsection (3)) as cannot be deducted under section 124A(5) or 124C(6) of FA 2012 from the company's BLAGAB trade profit (if any) of the later period.
- (6) Under paragraph 70(1) of Schedule 18 to FA 1998, the company surrenders losses or other amounts, so far as eligible for surrender under this Chapter, by consenting to one or more claims for group relief for carried-forward losses in relation to the amounts (see requirement 1 in section 188CB(3) and requirement 1 in section 188CC(3)).
- (7) In this Part, in relation to losses or other amounts within subsection (1) or (4) that a company has carried forward to an accounting period—
- “the surrenderable amounts” means those losses and other amounts so far as eligible for surrender under this Chapter,
  - “surrendering company” means the company that has the losses or other amounts,
  - “the surrender period” means the accounting period to which the losses and other amounts have been carried forward.
- (8) See sections 188BC to 188BJ for provisions restricting what the surrendering company may surrender under this section.

### **188BC Restriction on surrendering pre-1 April 2017 losses etc**

- (1) The surrendering company may not surrender under this Chapter—
- (a) a loss carried forward to the surrender period under section 753(3) of CTA 2009 in so far as the loss is made up of an amount previously carried forward under that section from an accounting period beginning before 1 April 2017,
  - (b) expenses carried forward to the surrender period under section 1223 of CTA 2009 if the expenses were first deductible under section 1219 of that Act for an accounting period beginning before that date, or

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- (c) a loss carried forward to the surrender period under section 62(5)(a) or 63(3)(a) of this Act if the loss was made in an accounting period beginning before that date.
- (2) The surrendering company may not surrender under this Chapter a qualifying charitable donation carried forward to the surrender period under section 1223 of CTA 2009.

### **188BD Restriction where investment business has become small or negligible**

- (1) The surrendering company may not surrender under this Chapter—
- (a) a loss carried forward to the surrender period under section 753(3) of CTA 2009 if an investment business carried on by the surrendering company became small or negligible before the beginning of that period,
  - (b) expenses carried forward to the surrender period under section 1223 of CTA 2009 if the surrendering company's investment business became small or negligible before the beginning of that period, or
  - (c) a loss carried forward to the surrender period under section 62(5)(a) or 63(3)(a) if the surrendering company's investment business became small or negligible before the beginning of that period.
- (2) In this section—
- (a) “company with investment business” has the same meaning as in Part 16 of CTA 2009 (see section 1218B of that Act);
  - (b) references to a company's investment business are to be construed in accordance with section 1219(2) of CTA 2009.

### **[<sup>F2</sup>188BE Restriction where surrendering company could use losses etc itself**

The surrendering company may not surrender under this Chapter any loss or other amount carried forward to the surrender period to the extent that the loss or other amount could be deducted from the total profits of the company for the period at Step 2 of section 4(2).]

#### **Textual Amendments**

- F2** S. 188BE substituted (with effect in accordance with Sch. 8 para. 17 of the amending Act) by [Finance Act 2021 \(c. 26\)](#), [Sch. 8 para. 6](#)

### **188BF Restriction where surrendering company has no income-generating assets**

The surrendering company may not surrender any losses or other amounts under this Chapter if at the end of the surrender period the surrendering company has no assets capable of producing income.

### **188BG Restrictions for certain insurance companies**

- (1) If the surrendering company is a general insurance company and the surrender period is an excluded accounting period, the company may not surrender under this Chapter—

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- (a) a loss carried forward to the surrender period under section 753(3) of CTA 2009;
  - (b) expenses carried forward to the surrender period under section 1223 of CTA 2009;
  - (c) a loss carried forward to the surrender period under section 62(5)(a) or 63(3)(a).
- (2) In subsection (1) “excluded accounting period” and “general insurance company” are to be interpreted in accordance with section 269ZG.
- (3) If the surrendering company is a Solvency 2 insurance company it may not surrender under this Chapter—
- (a) a loss carried forward to the surrender period under section 753(3) of CTA 2009,
  - (b) expenses carried forward to the surrender period under section 1223 of CTA 2009,<sup>F3</sup> ...
  - (c) a loss carried forward to the surrender period under section 62(5)(a) or 63(3)(a),<sup>F4</sup> or
  - (d) a BLAGAB trade loss carried forward to the surrender period under section 124A(2) or 124C(3) of FA 2012,]
- so far as the loss is, or (as the case may be) the expenses are, a shock loss.

#### **Textual Amendments**

- F3** Word in s. 188B(3)(b) omitted (with effect in accordance with Sch. 10 para. 32 of the amending Act) by virtue of [Finance Act 2019 \(c. 1\)](#), [Sch. 10 para. 23\(a\)](#)
- F4** S. 188B(3)(d) and word inserted (with effect in accordance with Sch. 10 para. 32 of the amending Act) by virtue of [Finance Act 2019 \(c. 1\)](#), [Sch. 10 para. 23\(b\)](#)

### **188BH Restriction on surrender of losses etc made when UK resident**

- (1) This section applies in relation to a loss or other amount carried forward to the surrender period if the surrendering company was UK resident during the loss-making period.
- (2) The surrendering company may not surrender the loss or other amount under this Chapter so far as the loss or other amount—
- (a) is attributable to a permanent establishment through which the company carried on a trade outside the United Kingdom during the loss-making period (see subsection (3)), and
  - (b) is, or represents, an amount within subsection (5).
- (3) A loss or other amount is attributable to a permanent establishment of the surrendering company if (ignoring this section) the amount could be included in the company's surrenderable amounts for the surrender period if those amounts were determined—
- (a) by reference to that establishment alone, and
  - (b) by applying, in relation to that establishment, principles corresponding in all material respects to those mentioned in subsection (4).
- (4) The principles are those that would be applied for corporation tax purposes in determining an equivalent loss or other amount in the case of a permanent

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establishment through which a non-UK resident company carried on a trade in the United Kingdom.

- (5) An amount is within this subsection if, for the purposes of non-UK tax chargeable under the law of the territory in which the permanent establishment was situated, the amount is or at any time has been (in any period) deductible from or otherwise allowable against non-UK profits of a person other than the surrendering company.
- (6) Subsection (7) applies for the purposes of subsection (5) if, in order to determine if an amount is or at any time has been deductible or otherwise allowable for the purposes of non-UK tax chargeable under the law of a territory, it is necessary under that law to know if the amount (or a corresponding amount) is or has been deductible or otherwise allowable for tax purposes in the United Kingdom.
- (7) The amount is to be treated as deductible or otherwise allowable for the purposes of the non-UK tax chargeable under the law of the territory concerned if (and only if) the surrendering company is treated as resident in that territory for the purposes of the non-UK tax.
- (8) In this section and section 188BI—
  - “the loss-making period”, in relation to a loss or other amount, means the accounting period in which the loss was made or the amount arose,
  - “non-UK tax” has the meaning it has in Part 5 (see section 187), and
  - “non-UK profits” has the meaning given by section 108.

#### **188BI Restriction on surrender of losses made when non-UK resident**

- (1) This section applies in relation to a loss or other amount carried forward to the surrender period if during the loss-making period the surrendering company was a non-UK resident [<sup>F5</sup>company within the charge to corporation tax].
- <sup>F6</sup>(2) .....
- (3) <sup>F7</sup>... The surrendering company may surrender the loss or other amount under this Chapter only so far as conditions A, B and C are met in relation to the loss or amount.
- (4) Condition A is that the loss or other amount is attributable to activities of the surrendering company in respect of which it is within the charge to corporation tax for the loss-making period.
- (5) Condition B is that the loss or other amount is not attributable to activities of the surrendering company that are double taxation exempt for the loss-making period (within the meaning given by section 186).
- (6) Condition C is that—
  - (a) the loss or other amount does not correspond to, and is not represented in, an amount with subsection (7), and
  - (b) no amount brought into account in calculating the loss or other amount corresponds to, or is represented in, an amount within subsection (7).
- (7) An amount is within this subsection if, for the purposes of non-UK tax chargeable under the law of a territory, the amount is or at any time has been (in any period) deductible from or otherwise allowable against non-UK profits of any person.
- <sup>F8</sup>(8) .....

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- <sup>F9</sup>(9) .....
- (10) But an amount is not to be taken to be within subsection (7) <sup>F10</sup>... by reason only that it is—
- (a) an amount of profits brought into account for the purpose of being excluded from non-UK profits of the person, or
  - (b) an amount brought into account in calculating an amount of profits brought into account as mentioned in paragraph (a).
- (11) Subsection (12) applies for the purposes of subsection (7) if, in order to determine if an amount is or at any time has been deductible or otherwise allowable for the purposes of non-UK tax chargeable under the law of a territory, it is necessary under that law to know if the amount (or a corresponding amount) is or at any time has been deductible or otherwise allowable for tax purposes in the United Kingdom.
- (12) The amount is to be treated as deductible or otherwise allowable for the purposes of the non-UK tax chargeable under the law of the territory concerned.
- <sup>F11</sup>(13) .....
- <sup>F12</sup>(14) .....

#### Textual Amendments

- F5** Words in s. 188BI(1) substituted (6.4.2020) by [Finance Act 2019 \(c. 1\), Sch. 5 paras. 31, 35](#) (with [Sch. 5 para. 36](#))
- F6** [S. 188BI\(2\)](#) omitted (with effect in accordance with Sch. 4 para. 6 of the amending Act) by virtue of [Finance Act 2022 \(c. 3\), s. 24\(4\)\(a\)](#)
- F7** Words in s. 188BI(3) omitted (with effect in accordance with Sch. 4 para. 6 of the amending Act) by virtue of [Finance Act 2022 \(c. 3\), s. 24\(4\)\(b\)](#)
- F8** [S. 188BI\(8\)](#) omitted (with effect in accordance with Sch. 4 para. 6 of the amending Act) by virtue of [Finance Act 2022 \(c. 3\), s. 24\(4\)\(a\)](#)
- F9** [S. 188BI\(9\)](#) omitted (with effect in accordance with Sch. 4 para. 6 of the amending Act) by virtue of [Finance Act 2022 \(c. 3\), s. 24\(4\)\(a\)](#)
- F10** Words in s. 188BI(10) omitted (with effect in accordance with Sch. 4 para. 6 of the amending Act) by virtue of [Finance Act 2022 \(c. 3\), s. 24\(4\)\(c\)](#)
- F11** [S. 188BI\(13\)](#) omitted (with effect in accordance with Sch. 4 para. 6 of the amending Act) by virtue of [Finance Act 2022 \(c. 3\), s. 24\(4\)\(a\)](#)
- F12** [S. 188BI\(14\)](#) omitted (with effect in accordance with Sch. 4 para. 6 of the amending Act) by virtue of [Finance Act 2022 \(c. 3\), s. 24\(4\)\(a\)](#)

#### **188BJ Restriction on surrender losses etc made when dual resident**

The surrendering company may not surrender a loss or other amount under this Chapter if the company was not eligible to surrender the loss or other amount under Chapter 2 of Part 5 by reason of section 109 (restriction on losses etc surrenderable by dual resident).]

**Changes to legislation:**

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