



# Corporation Tax Act 2010

## 2010 CHAPTER 4

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

#### GROUP RELIEF FOR CARRIED-FORWARD LOSSES

### CHAPTER 4

#### LIMITATIONS ON RELIEF: CLAIMS UNDER SECTION 188CB

*[<sup>F1</sup>Further limitations on amount of relief if claim based on consortium conditions 1 or 2*

#### 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](#)

#### **188DH Condition 1: ownership proportion**

- (1) This section applies if—
  - (a) the claimant company makes a claim under section 188CB for group relief for carried-forward losses, and
  - (b) the claim is based on consortium condition 1.
- (2) The relief to be given on the claim is limited to the ownership proportion of the claimant company's relevant maximum for the overlapping period (see section 188DD to determine the claimant company's relevant maximum for the overlapping period).
- (3) The ownership proportion is the same as the lowest of the following proportions prevailing during the overlapping period—
  - (a) the proportion of the ordinary share capital of the claimant company that is beneficially owned by the surrendering company,

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- (b) the proportion of any profits available for distribution to equity holders of the claimant company to which the surrendering company is beneficially entitled,
  - (c) the proportion of any assets of the claimant company available for distribution to such equity holders on a winding up to which the surrendering company would be beneficially entitled, and
  - (d) the proportion of the voting power in the claimant company that is directly possessed by the surrendering company.
- (4) If any of the proportions in subsection (3) changes during the overlapping period, use the average of that proportion during that period.
- (5) If the claimant company is owned by the consortium company as a result of section 153(3) (consortium company involving holding companies), references in subsection (3) to the claimant company are to be read as references to the holding company in question.
- (6) In this section “the overlapping period” is to be read in accordance with section 188DG.
- (7) Chapter 6 of Part 5 (equity holders and profits or assets available for distribution) applies for the purposes of subsection (3)(b) and (c).

#### **188DI Condition 2: ownership proportion**

- (1) This section applies if—
- (a) the claimant company makes a claim under section 188CB for group relief for carried-forward losses, and
  - (b) the claim is based on consortium condition 2.
- (2) The limitation on relief in section 188DH applies in relation to the claim, but for this purpose references in section 188DH(3) to the surrendering company are to be read as reference to the link company.

#### **188DJ Condition 2: companies in link company's group**

- (1) Where—
- (a) the claimant company makes a claim under section 188CB, and
  - (b) the claim is based on consortium condition 2,
- the amount of relief to be given on the claim is limited by subsections (2) and (3).
- (2) There is a limit on the amount of group relief for carried-forward losses that can be given, in total, to the claimant company for the claim period on consortium claims made in relation to losses and other amounts surrendered by the link company and group companies.
- (3) That limit is the same as the limit that, as a result of section 188DH(2), would apply for the purposes of a consortium claim made by the claimant company for the claim period in relation to losses or other amounts surrendered by the link company, assuming that the link company was UK related.
- (4) In determining the limit that would apply as a result of section 188DH(2) it is to be assumed that the accounting period of the link company is the same as the accounting period of the claimant company.

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(5) In this section—

“consortium claim” means a claim for group relief for carried-forward losses under section 188CB,

“group company” means a company that is a member of the same group of companies as the link company (other than the link company itself), and

“UK related”, in relation to a company, has the meaning given by section 188CJ.

### **188DK Conditions 1 and 2: claimant company not controlled by surrendering company etc**

(1) This section applies if—

- (a) the claimant company makes a claim under section 188CB for group relief for carried-forward losses,
- (b) the claim is based on consortium condition 1, and
- (c) during any part of the overlapping period, arrangements within subsection (3) are in place which enable a person to prevent the surrendering company, either alone or together with one or more other companies that are members of the consortium, from controlling the claimant company.

(2) This section also applies if—

- (a) the claimant company makes a claim under section 188CB for group relief for carried-forward losses,
- (b) the claim is based on consortium condition 2, and
- (c) during any part of the overlapping period, arrangements within subsection (3) are in place which enable a person to prevent the link company, either alone or together with one or more other companies that are members of the consortium, from controlling the claimant company.

(3) Arrangements are within this subsection if—

- (a) the company, either alone or together with one or more other companies that are members of the consortium, would control the claimant company, but for the existence of the arrangements, and
- (b) the arrangements form part of a scheme the main purpose, or one of the main purposes, of which is to enable the claimant company to obtain a tax advantage under this Chapter.

(4) The relief to be given on the claim is to be determined as if the claimant company's relevant maximum for the overlapping period was 50% of what it would be but for this section (see section 188DD to determine the claimant company's relevant maximum for the overlapping period).

(5) In this section “the overlapping period” is to be read in accordance with section 188DG

(6) Section 1139 (“tax advantage”) applies for the purposes of this section.

### **188DL Conditions 1 and 2: claimant company in group of companies**

(1) This section applies if—

- (a) the claimant company makes a claim under section 188CB based on consortium condition 1 or 2, and

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- (b) the claimant company is a member of a group of companies.
- (2) In determining the claimant company's relevant maximum for the overlapping period under section 188DD, the amount calculated at step 1 of that section is to be treated as reduced (but not below nil) by the group's potential relief.
- (3) The group's potential relief is the sum of—
- (a) the maximum amount of group relief for carried-forward losses that could be claimed by the claimant company for the claim period on claims under section 188CB based on the group condition, and
  - (b) the maximum amount of group relief under Part 5 that could be claimed by the claimant company for the claim period on claims under section 130 based on the group condition.
- (4) Before determining the maximum amount of potential group relief for carried-forward losses or potential group relief under subsection (3) take account of any claim made before the claim mentioned in subsection (1) that—
- (a) is a claim for group relief or group relief for carried-forward losses based on the group condition made by another member of the same group of companies as the claimant company, and
  - (b) is in relation to losses or other amounts surrendered.]

**Changes to legislation:**

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