



# Corporation Tax Act 2010

## 2010 CHAPTER 4

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

#### GROUP RELIEF FOR CARRIED-FORWARD LOSSES

##### 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](#)

##### Modifications etc. (not altering text)

- C1** Pt. 5A excluded (14.7.2022) by [Energy \(Oil and Gas\) Profits Levy Act 2022 \(c. 40\)](#), [s. 1\(5\)\(e\)](#) (with ss. 15(1), 16(1))

## CHAPTER 1

### INTRODUCTION

#### 188AA Introduction to Part

- (1) This Part—
  - (a) allows a company to surrender losses and other amounts that have been carried forward to an accounting period of the company (see Chapter 2), and
  - (b) enables, in certain cases involving groups or consortiums of companies, other companies to claim corporation tax relief for the losses and other amounts that are surrendered (see Chapter 3).
- (2) Chapters 4 and 5 contain limitations on the amount of corporation tax relief which may be given on a claim under Chapter 3.
- (3) See Chapter 5 for definitions that apply for the purposes of this Part and miscellaneous provisions.

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- (4) The corporation tax relief mentioned in this section is called “group relief for carried-forward losses.

## CHAPTER 2

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

#### **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);
    - (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.

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- (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
  - (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);

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- (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—
  - (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.

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### 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 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.

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## 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) .....

<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](#))

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- 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).

## **CHAPTER 3**

### **CLAIMS FOR GROUP RELIEF FOR CARRIED-FORWARD LOSSES**

#### *Introduction*

## **188CA Overview of Chapter**

This Chapter sets out how a company may claim group relief for carried-forward losses and how the relief is given.

### *Claiming group relief for carried-forward losses*

## **188CB Claims in relation to all the surrenderable amounts**

- (1) This section applies in relation to the surrendering company's surrenderable amounts for the surrender period under Chapter 2.
- (2) If the requirements in subsection (3) are met, a company ("the claimant company") may make a claim for group relief for carried-forward losses for an accounting period ("the claim period") in relation to the surrenderable amounts.
- (3) The requirements are as follows—
  - Requirement 1* The surrendering company consents to the claim.
  - Requirement 2* There is a period ("the overlapping period") that is common to the claim period and the surrender period.
  - Requirement 3* At a time during the overlapping period—
    - (a) the group condition is met (see section 188CE)

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- (b) consortium condition 1 is met (see section 188CF), or
  - (c) consortium condition 2 is met (see section 188CG).
- (4) A claim under this section may relate to the whole of the surrenderable amounts or to part of them only.
- (5) This section is subject to section 188CD (claim not allowed by company with unused carried-forward losses of its own).

**Modifications etc. (not altering text)**

- C2** S. 188CB(3) applied (with effect in accordance with [Sch. 4 para. 190](#) of the amending Act) by 1998 c. 36, [Sch. 18 para. 70\(1\)](#) (as substituted) by [Finance \(No. 2\) Act 2017 \(c. 32\)](#), [Sch. 4 para. 114\(2\)](#)

**188CC Claims in relation to the surrenderable amounts that are attributable to a specified accounting period**

- (1) This section applies in relation to the surrendering company's surrenderable amounts for the surrender period under Chapter 2.
- (2) If the requirements in subsection (3) are met, a company (“the claimant company”) may make a claim for group relief for carried-forward losses for an accounting period (“the claim period”) in relation to the surrenderable amounts that are attributable to an accounting period of the surrendering company specified in the claim (“the specified loss-making period”).
- (3) The requirements are as follows—
- Requirement 1* The surrendering company consents to the claim.
  - Requirement 2* There is a period (“the overlapping period”) that is common to the claim period and the surrender period.
  - Requirement 3* Consortium condition 3 (see section 188CH) or consortium condition 4 (see section 188CI) is met throughout a period which—
    - (a) begins before or during the specified loss-making period, and
    - (b) ends during or after the overlapping period.
- (4) A claim under this section may relate to the whole of the surrenderable amounts attributable to the specified loss-making period or to part of them only.
- (5) This section is subject to section 188CD (claim not allowed by company with unused carried-forward losses of its own)

**Modifications etc. (not altering text)**

- C3** S. 188CC(3) applied (with effect in accordance with [Sch. 4 para. 190](#) of the amending Act) by 1998 c. 36, [Sch. 18 para. 70\(1\)](#) (as substituted) by [Finance \(No. 2\) Act 2017 \(c. 32\)](#), [Sch. 4 para. 114\(2\)](#)

**188CD Claim not allowed by company with unused carried-forward losses of its own**

A company may not make a claim for group relief for carried-forward losses for an accounting period if—



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- (a) any amount carried forward to that period under any provision mentioned in section 188BB(1), or any amount which is carried forward to that period and falls within section 124B(1)(b) of FA 2012, is not deducted in full from the total profits of the company for that period at Step 2 of section 4(2),
- (b) the company makes a claim under section 458(1) of CTA 2009 for any amount of a deficit to be excepted from being set off against profits of that period,
- (c) the company makes a claim under section 45(4A) that the profits of a trade of that period are not to be reduced or are not to be reduced by more than a specified amount, or
- (d) the company makes a claim under section 45B(5) for relief not to be given in that period for an amount of a loss or for a specified part of an amount of a loss.

### **188CE The group condition**

- (1) The group condition is met if the surrendering company and the claimant company—
  - (a) are members of the same group of companies, and
  - (b) are both UK related.
- (2) For the meaning of “UK related” in subsection (1)(b) and in sections 188CF to 188CI, see section 188CJ.

### **188CF Consortium condition 1**

- (1) Consortium condition 1 is met if—
  - (a) the claimant company is a trading company or a holding company,
  - (b) the claimant company is owned by a consortium,
  - (c) the surrendering company is a member of the consortium, and
  - (d) both companies are UK related.
- (2) But consortium condition 1 is not met if a profit on a sale within subsection (3) by the surrendering company would be a trading receipt of the surrendering company.
- (3) A sale is within this subsection if it is a sale of—
  - (a) the share capital the surrendering company owns in the claimant company, or
  - (b) if the claimant company is owned by the consortium as a result of section 153(3) (consortiums involving holding companies), the share capital the surrendering company owns in the holding company in question.

### **188CG Consortium condition 2**

- (1) Consortium condition 2 is met if—
  - (a) the claimant company is a trading company or a holding company,
  - (b) the claimant company is owned by a consortium,
  - (c) the surrendering company is not a member of the consortium,
  - (d) the surrendering company is a member of the same group of companies as a third company (“the link company”),
  - (e) the link company is a member of the consortium,
  - (f) the surrendering company and the claimant company are both UK related.
- (2) But consortium condition 2 is not met if a profit on a sale within subsection (3) by the link company would be a trading receipt of that company.

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- (3) A sale is within this subsection if it is a sale of—
- (a) the share capital the link company owns in the claimant company, or
  - (b) if the claimant company is owned by the consortium as a result of section 153(3) (consortiums involving holding companies), the share capital the link company owns in the holding company in question.

### **188CH Consortium condition 3**

- (1) Consortium condition 3 is met if—
- (a) the surrendering company is a trading company or a holding company,
  - (b) the surrendering company is owned by a consortium,
  - (c) the claimant company is a member of the consortium, and
  - (d) both companies are UK related.
- (2) But consortium condition 3 is not met if a profit on a sale within subsection (3) by the claimant company would be a trading receipt of the claimant company.
- (3) A sale is within this subsection if it is a sale of—
- (a) the share capital the claimant company owns in the surrendering company, or
  - (b) if the surrendering company is owned by the consortium as a result of section 153(3) (consortiums involving holding companies), the share capital the claimant company owns in the holding company in question.

### **188CI Consortium condition 4**

- (1) Consortium condition 4 is met if—
- (a) the surrendering company is a trading company or a holding company,
  - (b) the surrendering company is owned by a consortium,
  - (c) the claimant company is not a member of the consortium,
  - (d) the claimant company is a member of the same group of companies as a third company (“the link company”),
  - (e) the link company is a member of the consortium, and
  - (f) the claimant company and the surrendering company are both UK related.
- (2) But consortium condition 4 is not met if a profit on a sale within subsection (3) by the link company would be a trading receipt of that company.
- (3) A sale is within this subsection if it is a sale of—
- (a) the share capital the link company owns in the surrendering company, or
  - (b) if the surrendering company is owned by the consortium as a result of section 153(3) (consortiums involving holding companies), the share capital the link company owns in the holding company in question.

### **188CJ Meaning of “UK related” company**

For the purpose of sections 188CE to 188CI a company is UK related if—

- (a) it is a UK resident company, or
- (b) it is a non-UK resident company [<sup>F13</sup>within the charge to corporation tax].

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### Textual Amendments

- F13** Words in s. 188CJ(b) substituted (with effect in accordance with s. 24(3) of the amending Act) by [Finance Act 2019 \(c. 1\), s. 24\(2\)](#)

## *Giving group relief for carried-forward losses*

### **188CK Deductions from total profits**

- (1) If a claimant company makes a claim under section 188CB or 188CC, the group relief for carried-forward losses is given by the making of a deduction from the claimant company's total profits of the claim period.
- (2) In the case of a claim under section 188CB, the amount of the deduction under subsection (1) is—
  - (a) an amount equal to the surrendering company's surrenderable amounts for the surrender period, or
  - (b) if the claim is in relation to only part of those amounts, an amount equal to that part.
- (3) Subsection (2) is subject to—
  - (a) subsections (6) to (9),
  - (b) the limitations set out in Chapter 4, and
  - (c) section 269ZD (restriction on deductions from total profits).
- (4) In the case of a claim under section 188CC, the amount of the deduction under subsection (1) is—
  - (a) an amount equal to the surrendering company's surrenderable amounts for the surrender period that are attributable to the specified loss-making period, or
  - (b) if the claim is in relation to only part of those amounts, an amount equal to that part.
- (5) Subsection (4) is subject to—
  - (a) subsections (6) to (9),
  - (b) the limitations set out in Chapter 5, and
  - (c) section 269ZD (restriction on deductions from total profits).
- (6) A deduction under subsection (1) is to be made—
  - (a) before deductions for relief within subsection (7), but
  - (b) after all other deductions to be made at Step 2 in section 4(2) (apart from deductions for group relief for carried-forward losses on other claims).
- (7) The deductions within this subsection are deductions for relief—
  - (a) under section 37 in relation to a loss made in an accounting period after the claim period,
  - (b) under section 260(3) of CAA 2001 in relation to capital allowances for an accounting period after the claim period, and
  - (c) under section 389 or 463B of CTA 2009 in relation to a deficit of a deficit period after the claim period.

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- (8) For the purposes of subsection (6)(b) it is to be assumed that the claimant company has claimed all relief available to it for the claim period under section 37 of this Act or section 260(3) of CAA 2001.
- (9) Corporation tax relief is not to be given more than once for the same amount, whether—
  - (a) by giving group relief for carried-forward losses and by giving some other relief (for any accounting period) to the surrendering company, or
  - (b) by giving group relief for carried-forward losses more than once.

## CHAPTER 4

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

#### *Introduction*

#### **188DA Overview**

This Chapter sets out limitations on the amount of relief which may be given on a claim under section 188CB.

#### *General limitation on amount of relief*

#### **188DB Limitation on amount of relief applying to all claims under section 188CB**

- (1) The amount of group relief for carried-forward losses to be given on a claim under section 188CB (“the current claim”) is limited to whichever is the lesser of—
  - (a) the amount mentioned in subsection (2), and
  - (b) the amount mentioned in subsection (3).
- (2) The amount referred to in subsection (1)(a) is the unused part of the surrenderable amounts (see section 188DC).
- (3) The amount referred to in subsection (1)(b) is the difference between—
  - (a) the claimant company's relevant maximum for the overlapping period (see section 188DD), and
  - (b) the amount of previously claimed group relief for carried-forward losses for the overlapping period (see section 188DE).

#### **Modifications etc. (not altering text)**

**C4** Ss. 188DB-188DG applied (1.4.2022 in relation to accounting periods beginning on or after that date) by [Finance Act 2022 \(c. 3\)](#), s. 51(1), [Sch. 7 para. 18\(1\)](#)

#### **188DC Unused part of the surrenderable amounts**

- (1) The unused part of the surrenderable amounts is the amount equal to—
  - (a) the surrenderable amount for the overlapping period (see subsection (2)), less

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- (b) the amount of prior surrenders for that period (see subsections (3) to (5)).
- (2) To determine the surrenderable amount for the overlapping period—
  - (a) take the proportion of the surrender period included in the overlapping period, and
  - (b) apply that proportion to the surrenderable amounts for the surrender period.

The surrenderable amount for the overlapping period is the amount given as a result of paragraph (b).

- (3) To determine the amount of prior surrenders for the overlapping period—
  - (a) identify any prior claims for the purposes of this section (see subsection (4)), and
  - (b) take the steps set out in subsection (5) in relation to each such claim.

The amount of prior surrenders for the overlapping period is the total of the previously used amounts given at step 3 in subsection (5) for all the prior claims.

- (4) A claim is a prior claim for the purposes of this section if—
  - (a) it is either—
    - (i) a claim under section 188CB by any company which relates to the same amounts as the current claim, or
    - (ii) a claim under section 188CC by any company which relates to amounts included in the amounts to which the current claim relates,
  - (b) it is made before the current claim, and
  - (c) it has not been withdrawn.
- (5) These are the steps referred to in subsection (3)(b) to be taken in relation to each prior claim.

*Step 1* Identify the overlapping period for the prior claim.

*Step 2* Identify any period that is common to the overlapping period for the current claim and the overlapping period for the prior claim. If there is a common period, go to step 3. If there is no common period, there is no previously used amount in relation to the prior claim (and ignore step 3).

*Step 3* Determine the previously used amount of group relief for carried-forward losses in relation to the prior claim (see subsection (6)).

- (6) To determine the previously used amount of group relief for carried-forward losses in relation to a prior claim—
  - (a) take the proportion of the overlapping period for the prior claim that is included in the common period identified at step 2 in relation to that claim, and
  - (b) apply that proportion to the amount of group relief for carried-forward losses given on the prior claim.

The previously used amount of group relief for carried-forward losses in relation to the prior claim is the amount given as a result of paragraph (b).

- (7) For the meaning of the “overlapping period” see section 188DG.

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**Modifications etc. (not altering text)**

- C4** Ss. 188DB-188DG applied (1.4.2022 in relation to accounting periods beginning on or after that date) by Finance Act 2022 (c. 3), s. 51(1), **Sch. 7 para. 18(1)**

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- C5** S. 188DC(4)(a)(ii) modified (1.4.2022 in relation to accounting periods beginning on or after that date) by Finance Act 2022 (c. 3), s. 51(1), **Sch. 7 para. 18(2)(a)**

### **188DD Claimant company's relevant maximum for overlapping period**

- (1) The claimant company's relevant maximum for the overlapping period is determined as follows—

*Step 1* Calculate the claimant company's relevant maximum for the claim period in accordance with section 269ZD(4).

*Step 2* Deduct from that amount the sum of—

- (a) any deductions made by the company for the claim period
  - (i) under section 45(4)(b) or 45B(4), or
  - (ii) under section 303B or 303D by virtue of section 304(5),
- (b) any deductions made by the company for the claim period under section 457(3) or 463H(5) of CTA 2009,
- (c) any deductions made by the company for the claim period under section 124(5), 124A(5) or 124C(6) of FA 2012, and
- (d) any deductions made by the company for the claim period which are deductions within any of paragraphs (a) to (i) and (k) of section 269ZD(3).

*Step 3* Take the proportion of the claim period included in the overlapping period and apply that proportion to the amount arrived at under step 2.

- (2) In step 2 of subsection (1)—

- (a) in paragraph (a)(i), the references to deductions under section 45(4)(b) or 45B(4) do not include deductions that would be ignored for the purposes of section 269ZB by reason of—
  - (i) section 1209(3), 1210(5A) or 1211(7A) of CTA 2009 (losses of film trade),
  - (ii) section 1216DA(3), 1216DB(5A) or 1216DC(7A) of that Act (losses of television programme trade),
  - (iii) section 1217DA(3), 1217DB(5A) or 1217DC(7A) of that Act (losses of video game trade),
  - (iv) section 1217MA(3) or 1217MC(9) of that Act (losses of theatrical trade),
  - (v) section 1217SA(3) or 1217SC(9) of that Act (losses of orchestral trade),
  - (vi) section 1218ZDA(3) or 1218ZDC(9) of that Act (losses of museum or gallery exhibition trade),
  - (vii) section 65(4B) or 67A(5A) (losses of UK or EEA furnished holiday lettings business),
  - (viii) section 269ZJ(1) (insurance companies: shock losses),
  - (ix) section 304(7) (certain losses of ring fence trades), or
  - (x) section 356NJ(2) (pre-1 April 2017 loss arising from oil contractor activities);
- (b) in paragraph (b) the reference to a deduction under section 463H(5) does not include the deduction of a shock loss.

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- (3) If the amount of the claimant company's [<sup>F14</sup>qualifying] profits for the claim period (calculated in accordance with [<sup>F15</sup>subsection (3A)]) is less than the amount of the claimant company's deductions allowance for the claim period (determined in accordance with section [<sup>F16</sup>269ZDA]), subsection (1) has effect as if step 1 was modified as follows—

*Step 1* Calculate the claimant company's [<sup>F14</sup>qualifying] profits for the claim period in accordance with [<sup>F15</sup>subsection (3A)].

[<sup>F17</sup>(3A) The claimant company's "qualifying profits" for the claim period are—

- (a) the amount given by paragraph (1) of step 1 in section 269ZF(3) in determining the company's [<sup>F18</sup>modified total profits] for the period, less
- (b) the amount given by paragraph (1) of step 2 in section 269ZF(3) [<sup>F19</sup>which could be relieved against] those profits for the period.]

[<sup>F20</sup>(4) . . . . .

- (5) Subsection (2) is to be ignored if subsection (3) applies.

#### Textual Amendments

- F14** Word in s. 188DD(3) substituted (with effect in accordance with Sch. 10 para. 32 of the amending Act) by [Finance Act 2019 \(c. 1\)](#), [Sch. 10 para. 24\(2\)\(a\)](#)
- F15** Words in s. 188DD(3) substituted (with effect in accordance with Sch. 10 para. 32 of the amending Act) by [Finance Act 2019 \(c. 1\)](#), [Sch. 10 para. 24\(2\)\(b\)](#)
- F16** Word in s. 188DD(3) substituted (with effect in accordance with Sch. 8 para. 18 of the amending Act) by [Finance Act 2021 \(c. 26\)](#), [Sch. 8 para. 7\(2\)](#)
- F17** S. 188DD(3A) inserted (with effect in accordance with Sch. 10 para. 32 of the amending Act) by [Finance Act 2019 \(c. 1\)](#), [Sch. 10 para. 24\(3\)](#)
- F18** Words in s. 188DD(3A)(a) substituted (with effect in accordance with Sch. 8 para. 18 of the amending Act) by [Finance Act 2021 \(c. 26\)](#), [Sch. 8 para. 7\(3\)\(a\)](#)
- F19** Words in s. 188DD(3A)(b) substituted (with effect in accordance with Sch. 8 para. 18 of the amending Act) by [Finance Act 2021 \(c. 26\)](#), [Sch. 8 para. 7\(3\)\(b\)](#)
- F20** S. 188DD(4) 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. 2](#)

#### Modifications etc. (not altering text)

- C4** [Ss. 188DB-188DG](#) applied (1.4.2022 in relation to accounting periods beginning on or after that date) by [Finance Act 2022 \(c. 3\)](#), s. 51(1), [Sch. 7 para. 18\(1\)](#)
- C6** S. 188DD excluded (16.11.2017) by [Finance \(No. 2\) Act 2017 \(c. 32\)](#), Sch. 4 para. 194(2)
- C7** [S. 188DD](#) modified (1.4.2022 in relation to accounting periods beginning on or after that date) by [Finance Act 2022 \(c. 3\)](#), s. 51(1), [Sch. 7 para. 18\(2\)\(b\)](#)

### 188DE Previously claimed group relief for carried-forward losses

- (1) To determine the amount of previously claimed group relief for carried-forward losses for the overlapping period—
- (a) identify any prior claims for the purposes of this section (see subsection (2)), and
  - (b) take the steps set out in subsection (3) in relation to each such claim.

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The amount of previously claimed group relief for carried-forward losses for the overlapping period is the total of the previously claimed amounts given at step 3 in subsection (3) for all the prior claims.

- (2) A claim is a prior claim for the purposes of this section if—
- (a) it is a claim under section 188CB or 188CC by the claimant company for group relief for carried-forward losses which would be given by way of a deduction from the company's total profits of the claim period,
  - (b) it is made before the current claim, and
  - (c) it has not been withdrawn.
- (3) These are the steps referred to in subsection (1)(b) to be taken in relation to each prior claim.
- Step 1* Identify the overlapping period for the prior claim.
- Step 2* Identify any period that is common to the overlapping period for the current claim and the overlapping period for the prior claim. If there is a common period, go to step 3. If there is no common period, there is no previously claimed amount in relation to the prior claim (and ignore step 3).
- Step 3* Determine the previously claimed amount of group relief for carried forward losses in relation to the prior claim (see subsection (4)).
- (4) To determine the previously claimed amount of group relief for carried-forward losses in relation to a prior claim—
- (a) take the proportion of the overlapping period for the prior claim that is included in the common period identified at step 2 in relation to that claim, and
  - (b) apply that proportion to the amount of group relief for carried-forward losses given on the prior claim.

The previously claimed amount of group relief for carried-forward losses in relation to the prior claim is the amount given as a result of paragraph (b).

**Modifications etc. (not altering text)**

- C4** Ss. 188DB-188DG applied (1.4.2022 in relation to accounting periods beginning on or after that date) by [Finance Act 2022 \(c. 3\)](#), s. 51(1), [Sch. 7 para. 18\(1\)](#)
- C8** S. 188DE(2)(a) modified (1.4.2022 in relation to accounting periods beginning on or after that date) by [Finance Act 2022 \(c. 3\)](#), s. 51(1), [Sch. 7 para. 18\(2\)\(c\)](#)

**188DF Sections 188DC to 188DE: supplementary**

- (1) If two or more claims for group relief for carried-forward losses are made at the same time, for the purpose of section 188DC and 188DE treat the claims as made—
- (a) in such order as the company making them may elect or the companies making them may jointly elect, or
  - (b) if no such election is made, in such order as an officer of Revenue and Customs may direct.
- (2) For the purpose of step 3 in each of section 188DC(5) and 188DE(3) the amount of group relief for carried-forward losses given on a prior claim is determined on the basis that relief is given on the claim before it is given on any later claim.



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- (3) If the use of any proportion mentioned in subsection (4), would, in the circumstances of a particular case, produce a result that is unjust or unreasonable, the proportion is to be modified so far as necessary to produce a result that is just and reasonable.
- (4) The proportions are those found in—
- (a) section 188DC(2),
  - (b) section 188DC(6),
  - (c) step 3 in section 188DD(1), and
  - (d) section 188DE(4)

**Modifications etc. (not altering text)**

- C4** Ss. 188DB-188DG applied (1.4.2022 in relation to accounting periods beginning on or after that date) by Finance Act 2022 (c. 3), s. 51(1), **Sch. 7 para. 18(1)**

**188DG Sections 188DC and 188DE: meaning of “the overlapping period”**

- (1) In sections 188DC and 188DE “the overlapping period”, in relation to a claim for group relief for carried-forward losses, means the period that is common to the claim period and the surrender period (see Requirement 2 in section 188CB(3) and Requirement 2 in section 188CC(3)).
- (2) But if during any part of the overlapping period the relief condition is not met, that part is treated as not forming part of the overlapping period but instead as forming—
- (a) a part of the surrender period that is not included in the overlapping period, and
  - (b) a part of the claim period that is not included in the overlapping period.
- (3) The relief condition is the condition on which the claim for group relief for carried forward losses is based, that is—
- the group condition,
  - consortium condition 1,
  - consortium condition 2,
  - consortium condition 3, or
  - consortium condition 4.

**Modifications etc. (not altering text)**

- C4** Ss. 188DB-188DG applied (1.4.2022 in relation to accounting periods beginning on or after that date) by Finance Act 2022 (c. 3), s. 51(1), **Sch. 7 para. 18(1)**
- C9** S. 188DG modified (1.4.2022 in relation to accounting periods beginning on or after that date) by Finance Act 2022 (c. 3), s. 51(1), **Sch. 7 para. 18(2)(d)**

*Further limitations on amount of relief if claim based on consortium conditions 1 or 2*

**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

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- (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,
  - (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

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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.
- (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).

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- (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
  - (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.

## **CHAPTER 5**

### **LIMITATIONS ON RELIEF: CLAIMS UNDER SECTION 188CC**

#### *Introduction*

### **188EA Overview of Chapter**

This Chapter sets out limitations on the amount of relief which may be given on a claim under section 188CC.

#### *General limitation on amount of relief*

### **188EB Limitation on amount of relief applying to all claims under section 188CC**

- (1) The amount of group relief for carried-forward losses to be given on a claim under section 188CC (“the current claim”) is limited to whichever is the lesser of—
  - (a) the amount mentioned in subsection (2),
  - (b) the amount mentioned in subsection (3), and

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- (c) the amount mentioned in subsection (4).
- (2) The amount referred to in subsection (1)(a) is the unused part of the surrenderable amounts that are attributable to the specified loss-making period (see section 188EC).
- (3) The amount referred to in subsection (1)(b) is the difference between—
  - (a) the claimant company's relevant maximum for the overlapping period (see section 188ED), and
  - (b) the amount of previously claimed group relief for carried-forward losses for the overlapping period (see section 188EE).
- (4) The amount referred to in subsection (1)(c) is the potential Part 5 group relief amount (see section 188EF).

### **188EC Unused part of surrenderable amounts attributable to specified loss-making period**

- (1) The unused part of the surrenderable amounts that are attributable to the specified loss-making period is the amount equal to—
  - (a) the surrenderable amount for the overlapping period (see subsection (2)), less
  - (b) the amount of prior surrenders for that period (see subsections (3) to (5)).
- (2) To determine the surrenderable amount for the overlapping period—
  - (a) take the proportion of the surrender period included in the overlapping period, and
  - (b) apply that proportion to the surrenderable amounts for the surrender period that are attributable to the specified loss-making period.

The surrenderable amount for the overlapping period is the amount given as a result of paragraph (b).

- (3) To determine the amount of prior surrenders for the overlapping period—
  - (a) identify any prior claims for the purposes of this section (see subsection (4)), and
  - (b) take the steps set out in subsection (5) in relation to each such claim.

The amount of prior surrenders for the overlapping period is the total of the previously used amounts given at step 3 in subsection (5) for all the prior claims.

- (4) A claim is a prior claim for the purposes of this section if—
  - (a) it is either—
    - (i) a claim under section 188CB by any company which relates to the amounts to which the current claim relates (as well as any other amounts), or
    - (ii) a claim under section 188CC by any company which relates to the same amounts to which the current claim relates,
  - (b) it is made before the current claim, and
  - (c) it has not been withdrawn.
- (5) These are the steps referred to in subsection (3)(b) to be taken in relation to each prior claim.

*Step 1* Identify the overlapping period for the prior claim.

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*Step 2* Identify any period that is common to the overlapping period for the current claim and the overlapping period for the prior claim. If there is a common period, go to step 3. If there is no common period, there is no previously used amount in relation to the prior claim (and ignore step 3).

*Step 3* Determine the previously used amount of group relief for carried-forward losses in relation to the prior claim (see subsections (6) to (8)).

- (6) To determine the previously used amount of group relief for carried-forward losses in relation to a prior claim made under section 188CB—

*Step 1* Take the proportion of the overlapping period for the prior claim that is included in the common period identified at step 2 in subsection (5) in relation to that claim.

*Step 2* Apply that proportion to the amount of group relief for carried-forward losses given on the claim.

*Step 3* Multiply the amount arrived at under step 2 by the fraction set out in subsection (7).

- (7) The fraction is—

$$\frac{A}{B}$$

where—

A is the sum of the surrenderable amounts that are attributable to the specified loss-making period, and

B is the sum of all the surrenderable amounts.

- (8) To determine the previously used amount of group relief for carried-forward losses in relation to a prior claim made under section 188CC—

- (a) take the proportion of the overlapping period for the prior claim that is included in the common period identified at step 2 in subsection (5) in relation to that claim, and
- (b) apply that proportion to the amount of group relief for carried-forward losses given on the prior claim.

The previously used amount of group relief for carried-forward losses in relation to the prior claim is the amount given as a result of paragraph (b).

### **188ED Claimant company's relevant maximum for the overlapping period**

- (1) The claimant company's relevant maximum for the overlapping period is determined as follows—

*Step 1* Calculate the claimant company's relevant maximum for the claim period in accordance with section 269ZD(4).

*Step 2* Deduct from that amount the sum of—

- (a) any deductions made by the company for the claim period
  - (i) under section 45(4)(b) or 45B(4), or
  - (ii) under section 303B or 303D by virtue of section 304(5),
- (b) any deduction made by the company for the claim period under section 457(3) or 463H(5) of CTA 2009,

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- (c) any deductions made by the company for the claim period under section 124(5), 124A(5) or 124C(6) of FA 2012, and
- (d) any deductions made by the company for the claim period which are deductions within any of paragraphs (a) to (i) and (k) of section 269ZD(3).

*Step 3* Take the proportion of the claim period included in the overlapping period and apply that proportion to the amount arrived at under step 2.

(2) In step 2 of subsection (1)—

- (a) in paragraph (a)(i), the references to deductions under section 45(4)(b) or 45B(4) do not include deductions that would be ignored for the purposes of section 269ZB by reason of—
  - (i) section 1209(3), 1210(5A) or 1211(7A) of CTA 2009 (losses of film trade),
  - (ii) section 1216DA(3), 1216DB(5A) or 1216DC(7A) of that Act (losses of television programme trade),
  - (iii) section 1217DA(3), 1217DB(5A) or 1217DC(7A) of that Act (losses of video game trade),
  - (iv) section 1217MA(3) or 1217MC(9) of that Act (losses of theatrical trade),
  - (v) section 1217SA(3) or 1217SC(9) of that Act (losses of orchestral trade),
  - (vi) section 1218ZDA(3) or 1218ZDC(9) of that Act (losses of museum or gallery exhibition trade),
  - (vii) section 65(4B) or 67A(5A) (losses of UK or EEA furnished holiday lettings business),
  - (viii) section 269ZJ(1) (insurance companies: shock losses),
  - (ix) section 304(7) (certain losses of ring fence trades), or
  - (x) section 356NJ(2) (pre-1 April 2017 loss arising from oil contractor activities);
- (b) in paragraph (b) the reference to a deduction under section 463H(5) does not include the deduction of a shock loss.

(3) If the amount of the claimant company's [<sup>F21</sup>qualifying] profits for the claim period (calculated in accordance with [<sup>F22</sup>subsection (3A)]) is less than the amount of the claimant company's deductions allowance for the claim period (determined in accordance with section 269ZD(6)), subsection (1) has effect as if step 1 was modified as follows—

*Step 1* Calculate the claimant company's [<sup>F21</sup>qualifying] profits for the claim period in accordance with [<sup>F22</sup>subsection (3A)].

[<sup>F23</sup>(3A) The claimant company's "qualifying profits" for the claim period are—

- (a) the amount given by paragraph (1) of step 1 in section 269ZF(3) in determining the company's qualifying trading profits and qualifying non-trading profits for the period, less
- (b) the amount given by paragraph (1) of step 2 in section 269ZF(3) in determining those profits for the period.]

[<sup>F24</sup>(4) . . . . .]

(5) Subsection (2) is to be ignored if subsection [<sup>F25</sup>(3)] applies.

*Changes to legislation: There are currently no known outstanding effects for the Corporation Tax Act 2010, PART 5A. (See end of Document for details)*

### Textual Amendments

- F21** Word in s. 188ED(3) substituted (with effect in accordance with Sch. 10 para. 32 of the amending Act) by [Finance Act 2019 \(c. 1\)](#), **Sch. 10 para. 25(2)(a)**
- F22** Words in s. 188ED(3) substituted (with effect in accordance with Sch. 10 para. 32 of the amending Act) by [Finance Act 2019 \(c. 1\)](#), **Sch. 10 para. 25(2)(b)**
- F23** S. 188ED(3A) inserted (with effect in accordance with Sch. 10 para. 32 of the amending Act) by [Finance Act 2019 \(c. 1\)](#), **Sch. 10 para. 25(3)**
- F24** S. 188ED(4) 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. 3(a)**
- F25** Word in s. 188ED(5) substituted (with effect in accordance with Sch. 10 para. 32 of the amending Act) by [Finance Act 2019 \(c. 1\)](#), **Sch. 10 para. 3(b)**

### Modifications etc. (not altering text)

- C10** S. 188ED excluded (16.11.2017) by [Finance \(No. 2\) Act 2017 \(c. 32\)](#), **Sch. 4 para. 194(2)**

## 188EE Previously claimed group relief for carried-forward losses

- (1) To determine the amount of previously claimed group relief for carried-forward losses for the overlapping period—
  - (a) identify any prior claims for the purposes of this section (see subsection (2)), and
  - (b) take the steps set out in subsection (3) in relation to each such claim.

The amount of previously claimed group relief for carried-forward losses for the overlapping period is the total of the previously claimed amounts given at step 3 in subsection (3) for all the prior claims.

- (2) A claim is a prior claim for the purposes of this section if—
  - (a) it is a claim under section 188CB or 188CC by the claimant company for group relief for carried-forward losses which would be given by way of a deduction from the company's total profits of the claim period,
  - (b) it is made before the current claim, and
  - (c) it has not been withdrawn.
- (3) These are the steps referred to in subsection (1)(b) to be taken in relation to each prior claim.

*Step 1* Identify the overlapping period for the prior claim.

*Step 2* Identify any period that is common to the overlapping period for the current claim and the overlapping period for the prior claim. If there is a common period, go to Step 3. If there is no common period, there is no previously claimed amount in relation to the prior claim (and ignore step 3).

*Step 3* Determine the previously claimed amount of group relief for carried forward losses in relation to the prior claim (see subsection (4)).

- (4) To determine the previously claimed amount of group relief for carried-forward losses in relation to a prior claim—
  - (a) take the proportion of the overlapping period for the prior claim that is included in the common period identified at step 2 in subsection (3) in relation to that claim, and



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- (b) apply that proportion to the amount of group relief for carried-forward losses given on the prior claim.

The previously claimed amount of group relief for carried-forward losses in relation to the prior claim is the amount given as a result of paragraph (b).

### 188EF The potential Part 5 group relief amount

- (1) The potential Part 5 group relief amount is determined as follows—

*Step 1* Calculate the maximum amount of group relief that could have been given to the claimant company under Part 5 in relation to losses or other amounts within section 99(1) which the surrendering company had for the specified loss-making period. In applying this step, ignore any lack of profits of the claimant company from which deductions could have been made as mentioned in section 137(1).

*Step 2* Deduct from the amount arrived at under step 1 the amount of any group relief actually given to the claimant company under Part 5 in relation to losses or other amounts within section 99(1) which the surrendering company had for the specified loss-making period.

*Step 3* Multiply the amount arrived at following step 2 by the fraction in subsection (2).

*Step 4* Deduct from the amount arrived at following step 3 any group relief for carried-forward losses previously given to the claimant company on claims under section 188CC which are related to the current claim.

- (2) The fraction referred to in step 3 is—

$$\frac{A}{B}$$

where—

A is the sum of the losses or other amounts within section 99(1)(a), (c), (e), (f) and (g) which the surrendering company had for the specified loss-making period, and

B is the sum of the losses or other amounts within section 99(1) (a) to (g) which the surrendering company had for the specified loss-making period.

- (3) References in subsection (2) to losses or other amounts are references to losses or other amounts only in so far as they were eligible for surrender under Chapter 2 of Part 5.
- (4) A claim under section 188CC is related to the current claim if the surrendering company and the specified loss-making period are the same in relation to both claims.

### 188EG Sections 188EC to 188EE: supplementary

- (1) If two or more claims for group relief for carried-forward losses are made at the same time, for the purpose of section 188EC and 188EE treat the claims as made—
- in such order as the company making them may elect or the companies making them may jointly elect, or
  - if no such election is made, in such order as an officer of Revenue and Customs may direct.

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- (2) For the purpose of step 3 in each of sections 188EC(5) and 188EE(3) the amount of group relief for carried-forward losses given on a prior claim is determined on the basis that relief is given on the claim before it is given on any later claim.
- (3) If the use of any proportion mentioned in subsection (4), would, in the circumstances of a particular case, produce a result that is unjust or unreasonable, the proportion is to be modified so far as necessary to produce a result that is just and reasonable.
- (4) The proportions are those found in—
  - (a) section 188EC(2)(a),
  - (b) step 1 in section 188EC(6),
  - (c) section 188EC(8)(a),
  - (d) step 3 in section 188ED(1), and
  - (e) section 188EE(4)(a).

#### **188EH Sections 188EC and 188EE: meaning of “the overlapping period”**

- (1) In sections 188EC and 188EE “the overlapping period”, in relation to a claim for group relief for carried-forward losses, means the period that is common to the claim period and the surrender period (see Requirement 2 in section 188CB(3) and Requirement 2 in section 188CC(3)).
- (2) But if during any part of the overlapping period the relief condition is not met, that part is treated as not forming part of the overlapping period but instead as forming—
  - (a) a part of the surrender period that is not included in the overlapping period, and
  - (b) a part of the claim period that is not included in the overlapping period.
- (3) The relief condition is the condition on which the claim for group relief for carried forward losses is based, that is—
  - the group condition,
  - consortium condition 1,
  - consortium condition 2,
  - consortium condition 3, or
  - consortium condition 4.

*Further limitations on amount of relief that apply in particular cases*

#### **188EI Condition 4: companies in link company's group**

- (1) Where—
  - (a) the claimant company makes a claim under section 188CC, and
  - (b) the claim is based on consortium condition 4the 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, on relevant consortium claims made by the link company and group companies.
- (3) That limit is the maximum amount of group relief for carried-forward losses that could be given to the link company on relevant consortium claims—

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- (a) assuming that no relevant consortium claims were made by group companies based on consortium condition 4,
  - (b) assuming that the link company was UK related, and
  - (c) ignoring any lack of profits of the link company from which deductions could be made as mentioned in section 188CK(1).
- (4) In this section—
- “consortium claim” means a claim made under section 188CC for group relief for carried-forward losses,
  - “group company” means a company that is a member of the same group of companies as the link company (other than the link company),
  - “relevant consortium claim” means a consortium claim in relation to which the surrendering company, the surrender period and the specified loss-making period are the same as is the case for the claim mentioned in subsection (1), and
  - “UK related”, in relation to a company, has the meaning given by section 188CJ.

#### **188EJ Condition 3 or 4: surrendering company not controlled by claimant company etc**

- (1) This section applies if—
- (a) the claimant company makes a claim under section 188CC for group relief for carried-forward losses,
  - (b) the claim is based on consortium condition 3, and
  - (c) during any part of the overlapping period, arrangements within subsection (3) are in place which enable a person to prevent the claimant company, either alone or together with one or more other companies that are members of the consortium, from controlling the surrendering company.
- (2) This section also applies if—
- (a) the claimant company makes a claim under section 188CC for group relief for carried-forward losses,
  - (b) the claim is based on consortium condition 4, 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 surrendering 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 surrendering 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 surrenderable amount for the overlapping period were 50% of what it would be but for this section (see section 188EC(2) to determine the surrenderable amount for the overlapping period).
- (5) In this section “the overlapping period” is to be read in accordance with section 188EH.

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

### **188EK Condition 3 or 4: surrendering company in group of companies**

- (1) This section applies if—
  - (a) the claimant company makes a claim under section 188CC for group relief for carried-forward losses, and
  - (b) the surrendering company is a member of a group of companies.
- (2) The surrendering company's surrenderable amounts for the surrender period that are attributable to the specified loss-making period are to be treated as reduced (but not below nil) by the relevant amount.
- (3) To determine the relevant amount—
  - Step 1* Calculate the group's potential relief.
  - Step 2* Multiply the amount arrived at under step 1 by the fraction set out in subsection (6).
- (4) The group's potential relief is the maximum amount of group relief for carried-forward losses that could be given if every claim that could be made based on the group condition in respect of the surrenderable amounts for the surrender period was in fact made (and for this purpose it is to be assumed that the maximum possible claim is made in each case).
- (5) Before determining the maximum amount of potential group relief for carried-forward losses under subsection (4), take account of any claim made before the current claim that—
  - (a) is a claim for group relief for carried-forward losses based on the group condition, and
  - (b) is in relation to losses or other amounts surrendered by a member of the same group of companies as the surrendering company (other than the surrendering company itself).
- (6) The fraction mentioned in step 2 in subsection (3) is—

$$\frac{A}{B}$$

where—

A is the sum of the surrendering company's surrenderable amounts for the surrender period that are attributable to the specified loss-making period, and

B is the sum of all the surrendering company's surrenderable amounts for the surrender period.

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## CHAPTER 6

### MISCELLANEOUS PROVISIONS AND INTERPRETATION OF PART

#### *Miscellaneous*

#### **188FA Payments for group relief for carried-forward losses**

- (1) This section applies if—
  - (a) the surrendering company and the claimant company have an agreement between them in relation to losses and other amounts of the surrendering company (“the agreed loss amounts”),
  - (b) group relief for carried-forward losses is given to the claimant company in relation to the agreed loss amounts, and
  - (c) as a result of the agreement the claimant company makes a payment to the surrendering company that does not exceed the total amount of the agreed loss amounts.
- (2) The payment—
  - (a) is not to be taken into account in determining the profits or losses of either company for corporation tax purposes, and
  - (b) for corporation tax purposes is not to be regarded as a distribution.

#### *Interpretation*

#### **188FB Subsidiaries, groups and consortiums**

Chapter 5 of Part 5 (which explains certain key concepts for the purposes of Part 5, including (in particular) how to determine if a company is a member of a group of companies or is a member of, or is owned by a consortium) applies for the purposes of this Part as it applies for the purposes of Part 5.

#### **188FC “Trading company” and “holding company”**

- (1) In this Part “trading company” means a company the business of which consists wholly or mainly in the carrying on of a trade.
- (2) In this Part “holding company” means a company the business of which consists wholly or mainly in the holding of shares or securities that—
  - (a) are its 90% subsidiaries, and
  - (b) are trading companies.

#### **188FD Other definitions**

- (1) In this Part—
  - “the claimant company” has the meaning given by section 188CB(2) or 188CC(2),
  - “the claim period” has the meaning given by section 188CB(2) or 188CC(2),
  - “company” means any body corporate,

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“group relief for carried-forward losses” has the meaning given by section 188AA(4),

“profits” means income and chargeable gains, except in so far as the context otherwise requires,

“shock loss” has the meaning given by section 269ZK,

“Solvency 2 insurance company” means an insurance company as defined in section 269ZP(2),

“the specified loss-making period”, in relation to a claim for group relief for carried forward losses made under section 188CC, has the meaning given by subsection (2) of that section,

“the surrenderable amounts” has the meaning given by section 188BB(7),

“surrendering company” has the meaning given by 188BB(7), and

“the surrender period” has the meaning given by section 188BB(7).

(2) In this Part, except in so far as the context otherwise requires—

- (a) references to a trade include an office, and
- (b) reference to carrying on a trade include holding an office.]

**Changes to legislation:**

There are currently no known outstanding effects for the Corporation Tax Act 2010, PART 5A.