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Changes to legislation: There are currently no known outstanding effects for the Finance Act 2021, SCHEDULE 2. (See end of Document for details)

SCHEDULES

SCHEDULE 2

Section 18

TEMPORARY EXTENSION OF PERIODS TO WHICH TRADE LOSSES MAY BE CARRIED BACK

PART 1

INCOME TAX

Relief for trade losses made in tax year 2020-21

- 1 (1) A person who has made a loss in a trade in the tax year 2020-21 may make a claim for relief under this paragraph if—
- (a) some or all of the loss (“the section 64 amount”) is an amount in respect of which the person is entitled to make a claim under section 64 of ITA 2007 (trade loss relief against general income) or would be so entitled were there sufficient income from which to deduct it, and
 - (b) condition A or B is met.
- (2) Condition A is that the person makes a claim under section 64 of ITA 2007 for relief in respect of the section 64 amount for either or both of the tax years 2019-20 and 2020-21.
- (3) Condition B is that the person's total income for the tax years 2019-20 and 2020-21—
- (a) is nil, or
 - (b) does not include any income from which a deduction could be made in pursuance of a claim under section 64 of ITA 2007 in respect of the section 64 amount.
- (4) The amount of the loss that may be relieved under this paragraph (“the deductible amount”) is—
- (a) if condition A is met, so much of the section 64 amount as cannot be relieved pursuant to the claim under section 64 of ITA 2007;
 - (b) if condition B is met, the whole of the section 64 amount.
- But see sub-paragraph (9) (limit on total deductions under this paragraph).
- (5) A claim for relief under this paragraph is for the deductible amount to be deducted (in accordance with whichever is applicable of sub-paragraphs (7) and (8)) in calculating the person's net income for one or more of the tax years 2017-18, 2018-19 and 2019-20 at Step 2 of the calculation in section 23 of ITA 2007 (which applies as if this paragraph were a provision listed in section 24 of that Act).
- (6) A deduction is to be made only from the profits of the trade (and accordingly subsection (2) of section 25 of ITA 2007 has effect as if this sub-paragraph were included in subsection (3) of that section).

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- (7) This sub-paragraph explains how the deductions are to be made in a case where the person makes a claim under section 64 of ITA 2007 for relief in respect of the section 64 amount for the tax year 2019-20.
- Step 1* Deduct the deductible amount from the profits of the trade for the tax year 2018-19.
- Step 2* Deduct from the profits of the trade for the tax year 2017-18 so much of the deductible amount as has not been deducted under Step 1.
- (8) This sub-paragraph explains how the deductions are to be made in any other case.
- Step 1* Deduct the deductible amount from the profits of the trade for the tax year 2019-20.
- Step 2* Deduct from the profits of the trade for the tax year 2018-19 so much of the deductible amount as has not been deducted under Step 1.
- Step 3* Deduct from the profits of the trade for the tax year 2017-18 so much of the deductible amount as has not been deducted under Step 1 or 2.
- (9) The total amount that may be deducted in accordance with sub-paragraph (7), or in accordance with Steps 2 and 3 in sub-paragraph (8), is limited to £2,000,000.
- (10) A claim for relief under this paragraph must be made on or before the first anniversary of the normal self-assessment filing date for the tax year 2020-21.

Relief for trade losses made in tax year 2021-22

- 2 (1) A person who has made a loss in a trade in the tax year 2021-22 may make a claim for relief under this paragraph if—
- (a) some or all of the loss (“the section 64 amount”) is an amount in respect of which the person is entitled to make a claim under section 64 of ITA 2007 (trade loss relief against general income) or would be so entitled were there sufficient income from which to deduct it, and
- (b) condition A or B is met.
- (2) Condition A is that the person makes a claim under section 64 of ITA 2007 for relief in respect of the section 64 amount for either or both of the tax years 2020-21 and 2021-22.
- (3) Condition B is that the person's total income for the tax years 2020-21 and 2021-22—
- (a) is nil, or
- (b) does not include any income from which a deduction could be made in pursuance of a claim under section 64 of ITA 2007 in respect of the section 64 amount.
- (4) The amount of the loss that may be relieved under this paragraph (“the deductible amount”) is—
- (a) if condition A is met, so much of the section 64 amount as cannot be relieved pursuant to the claim under section 64 of ITA 2007;
- (b) if condition B is met, the whole of the section 64 amount.
- But see sub-paragraph (9) (limit on total deductions under this paragraph).
- (5) A claim for relief under this paragraph is for the deductible amount to be deducted (in accordance with whichever is applicable of sub-paragraphs (7) and (8)) in calculating the person's net income for one or more of the tax years 2018-19, 2019-20 and

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2020-21 at Step 2 of the calculation in section 23 of ITA 2007 (which applies as if this paragraph were a provision listed in section 24 of that Act).

- (6) A deduction is to be made only from the profits of the trade (and accordingly subsection (2) of section 25 of ITA 2007 has effect as if this sub-paragraph were included in subsection (3) of that section).
- (7) This sub-paragraph explains how the deductions are to be made in a case where the person makes a claim under section 64 of ITA 2007 for relief in respect of the section 64 amount for the tax year 2020-21.
 - Step 1* Deduct the deductible amount from the profits of the trade for the tax year 2019-20.
 - Step 2* Deduct from the profits of the trade for the tax year 2018-19 so much of the deductible amount as has not been deducted under Step 1.
- (8) This sub-paragraph explains how the deductions are to be made in any other case.
 - Step 1* Deduct the deductible amount from the profits of the trade for the tax year 2020-21.
 - Step 2* Deduct from the profits of the trade for the tax year 2019-20 so much of the deductible amount as has not been deducted under Step 1.
 - Step 3* Deduct from the profits of the trade for the tax year 2018-19 so much of the deductible amount as has not been deducted under Step 1 or 2.
- (9) The total amount that may be deducted in accordance with sub-paragraph (7), or in accordance with Steps 2 and 3 in sub-paragraph (8), is limited to £2,000,000.
- (10) A claim for relief under this paragraph must be made on or before the first anniversary of the normal self-assessment filing date for the tax year 2021-22.

Further provision about relief under paragraph 1 or 2

- 3 (1) The following sections of ITA 2007 apply in relation to relief under paragraph 1 or 2 as they apply in relation to relief under section 64 of that Act—
 - (a) sections 66 to 70 (restrictions on relief under section 64),
 - (b) sections 74ZA to 74D (general restrictions on relief),
 - (c) section 74E (no relief where cash basis used to calculate losses),
 - (d) sections 75 to 79 (restrictions on relief under section 64 and early trade losses relief in relation to capital allowances), and
 - (e) section 80 (restrictions on those reliefs in relation to ring fence income).
- (2) Paragraphs 1 and 2 apply to professions and vocations as they apply to trades.
- (3) Paragraphs 1 and 2 are subject to paragraph 2 of Schedule 1B to TMA 1970 (claims to loss relief involving 2 or more years).
- (4) Sections 61 to 63 of ITA 2007 (meaning of “making a loss in a tax year” etc and prohibition against double counting) have effect as if paragraphs 1 and 2 were included in Chapter 2 of Part 4 of that Act.
- (5) The reference in paragraph 3(1) of Schedule 2 to the Social Security Contributions and Benefits Act 1992 and Social Security Contributions and Benefits (Northern Ireland) Act 1992 (levy of Class 4 contributions with income tax) to section 64 of ITA 2007 includes paragraphs 1 and 2.

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PART 2

CORPORATION TAX

Relief for trade losses incurred in accounting periods ending in financial year 2020 or 2021

- 4 (1) Sections 37(3)(b) and 38(1) and (3) of CTA 2010 (relief for trade losses against profits of same or earlier accounting period) have effect in relation to any loss to which this paragraph applies as if references to 12 months were references to 3 years (but subject as follows).
- (2) This paragraph applies to any loss incurred by a company in a trade in a relevant accounting period.
- (3) In this paragraph “relevant accounting period” means an accounting period that ends in the period beginning with 1 April 2020 and ending with 31 March 2022.
- (4) Sub-paragraph (5) applies where—
- (a) a loss incurred by a company in a relevant accounting period (“the relevant loss”) is, to any extent, relievably under section 37 of CTA 2010 by virtue of this paragraph, and
 - (b) some but not all of the relevant loss is also relievably under that section by virtue of section 40 of that Act (ring fence trades: extension of periods for which relief may be given).
- (5) A claim for relief under section 37 of CTA 2010 by virtue of this paragraph in respect of the relevant loss is treated, so far as possible, as being made in respect of the part of the loss that is not relievably as mentioned in sub-paragraph (4)(b).
- (6) Section 42 of CTA 2010 (ring fence trades: further extension of period of relief) has effect as if—
- (a) in subsection (1)(b), the reference to section 39 or 40 of that Act included a reference to this paragraph;
 - (b) in subsection (8), in the definition of “3 year relief period”, the reference to section 39 or 40 of that Act included a reference to this paragraph.

Cap on claims by company that is not a member of a 2020 group or 2021 group

- 5 (1) A 2020 claim may be made by a company that is not a member of a 2020 group only if the total amount of relief given as a result of the claim, when added to the total amount of relief given as a result of any other 2020 claims already made by the company, is under £2,000,000.
- (2) A 2021 claim may be made by a company that is not a member of a 2021 group only if the total amount of relief given as a result of the claim, when added to the total amount of relief given as a result of any other 2021 claims already made by the company, is under £2,000,000.

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Non-de minimis claims to be made after end of financial year

PROSPECTIVE

- 6 (1) A non-de minimis 2020 claim may not be made by a company (whether or not it is a member of a 2020 group) at any time before 31 March 2021.
- (2) A non-de minimis 2021 claim may not be made by a company (whether or not it is a member of a 2021 group) at any time before 31 March 2022.

Non-de minimis claims to be made in company tax return

- 7 (1) A non-de minimis claim must be made in the company tax return (whether as originally made or by amendment) for the accounting period in which the loss in respect of which the claim is made is incurred.
- (2) The company tax return for any earlier accounting period affected by the claim is treated as amended accordingly.

Meaning of “de minimis claim” etc

- 8 (1) For the purposes of this Part of this Schedule, a 2020 claim is a “de minimis 2020 claim” if—
- (a) the total amount of relief given as a result of the claim, when added to the total amount of relief given as a result of any other 2020 claims already made by the company, is under £200,000, and
 - (b) the condition in paragraph (a) would still be met on the assumptions in subparagraph (3).
- (2) For the purposes of this Part of this Schedule, a 2021 claim is a “de minimis 2021 claim” if—
- (a) the total amount of relief given as a result of the claim, when added to the total amount of relief given as a result of any other 2021 claims already made by the company, is under £200,000, and
 - (b) the condition in paragraph (a) would still be met on the assumptions in subparagraph (3).
- (3) The assumptions are—
- (a) that the company makes all claims available to it (if any) for allowances under CAA 2001, or any other provision of the Corporation Tax Acts, that would result in an increase in the amount of the loss in respect of which the claim in question is made;
 - (b) that the company does not surrender any amount under Part 5 of CTA 2010 (group relief);
 - (c) that the claim in question is for all of the relief available to the company under section 37 of CTA 2010 by virtue of paragraph 4 in relation to the loss in respect of which the claim is made.
- (4) In this Part of this Schedule—
- (a) “non-de minimis 2020 claim” means a 2020 claim that is not a de minimis 2020 claim;

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- (b) “non-de minimis 2021 claim” means a 2021 claim that is not a de minimis 2021 claim;
- (c) “de minimis claim” means a 2020 de minimis claim or a 2021 de minimis claim;
- (d) “non-de minimis claim” means a non-de minimis 2020 claim or a non-de minimis 2021 claim.

Cap on non-de minimis claims by company that is a member of a 2020 group or 2021 group

- 9 (1) A non-de minimis 2020 claim may be made by a company that is a member of a 2020 group only if the total amount of relief given as a result of each of the following claims is, in aggregate, less than £2,000,000—
- (a) the claim in question;
 - (b) any other 2020 claims made by the company (including any de minimis claims);
 - (c) any 2020 claims made by other members of the 2020 group (including any de minimis claims).
- (2) A non-de minimis 2021 claim may be made by a company that is a member of a 2021 group only if the total amount of relief given as a result of each of the following claims is, in aggregate, less than £2,000,000—
- (a) the claim in question;
 - (b) any other 2021 claims made by the company (including any de minimis claims);
 - (c) any 2021 claims made by other members of the 2021 group (including any de minimis claims).

Non-de minimis claims by group company to conform with statement

- 10 (1) A non-de minimis 2020 claim may be made by a company that is a member of a 2020 group only if—
- (a) a 2020 loss carry-back allocation statement has been submitted on behalf of the group in accordance with regulations under paragraph 11, and
 - (b) the claim is for an amount specified in that statement in accordance with those regulations.
- (2) A non-de minimis 2021 claim may be made by a company that is a member of a 2021 group only if—
- (a) a 2021 loss carry-back allocation statement has been submitted on behalf of the group in accordance with regulations under paragraph 11, and
 - (b) the claim is for an amount specified in that statement in accordance with those regulations.

Loss carry-back allocation statements

- 11 (1) The Commissioners must by regulations make provision—
- (a) requiring a statement (“a 2020 loss carry-back allocation statement”) to be submitted to HMRC on behalf of a 2020 group for the purpose of determining the non-de minimis 2020 claims that may be made by members of the group in compliance with paragraphs 9 and 10;

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- (b) requiring a statement (“a 2021 loss carry-back allocation statement”) to be submitted to HMRC on behalf of a 2021 group for the purpose of determining the non-de minimis 2021 claims that may be made by members of the group in compliance with paragraphs 9 and 10.

(2) The regulations may, in particular, include provision about—

- (a) the nomination by members of a 2020 group or 2021 group of a member of the group to submit a loss carry-back allocation statement on behalf of the group;
- (b) the contents of a loss carry-back allocation statement;
- (c) when a loss carry-back allocation statement is to be submitted;
- (d) when and how a loss carry-back allocation statement may or must be amended on behalf of a 2020 group or 2021 group;
- (e) when and how a loss carry-back allocation statement may be amended by an officer of HMRC;
- (f) the amendment of company tax returns in consequence of a loss carry-back allocation statement (including provision altering time limits that would otherwise apply);
- (g) the recovery of overpaid relief (including provision allowing an assessment to tax to be made).

(3) The reference in sub-paragraph (2)(g) to overpaid relief is to an amount paid to a company by HMRC where—

- (a) the payment is a repayment of tax made in consequence of a 2020 claim or 2021 claim,
- (b) the loss carry-back allocation statement is amended in accordance with regulations under this paragraph, and
- (c) as a result of the amendment, the claim no longer meets the condition in paragraph 10(1)(b) or (as the case may be) paragraph 10(2)(b) (claim to conform with loss carry-back allocation statement).

(4) In this paragraph—

“HMRC” means Her Majesty's Revenue and Customs;

“a loss carry-back allocation statement” means a 2020 loss carry-back allocation statement or a 2021 loss carry-back allocation statement.

Anti-avoidance

12 (1) A company may not make a 2020 claim if—

- (a) at any time in the period beginning with 1 April 2020 and ending with 31 March 2021 the company is a member of a group,
- (b) the company ceases to be a member of that group at any time in that period, and
- (c) the main purpose, or one of the main purposes, of the company's ceasing to be a member of the group is to increase the total amount of relief given as a result of a 2020 claim.

(2) A company may not make a 2021 claim if—

- (a) at any time in the period beginning with 1 April 2021 and ending with 31 March 2022 the company is a member of a group,

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- (b) the company ceases to be a member of that group at any time in that period, and
 - (c) the main purpose, or one of the main purposes, of the company's ceasing to be a member of the group is to increase the total amount of relief given as a result of a 2021 claim.
- (3) In this paragraph “group” has the meaning given by section 269ZZB of CTA 2010 (meaning “group” in Part 7ZA of CTA 2010).

Interpretation

- 13 (1) In this Part of this Schedule—

“2020 claim” means a claim for relief under section 37 of CTA 2010 by virtue of paragraph 4 that is made in respect of a loss incurred in an accounting period that ends in the period beginning with 1 April 2020 and ending with 31 March 2021;

“2021 claim” means a claim for relief under section 37 of CTA 2010 by virtue of paragraph 4 that is made in respect of a loss incurred in an accounting period that ends in the period beginning with 1 April 2021 and ending with 31 March 2022;

“2020 group” means two or more companies which, at the end of 31 March 2021, are a group within the meaning given by section 269ZZB of CTA 2010 (meaning of “group”);

“2021 group” means two or more companies which, at the end of 31 March 2022 are a group within the meaning given by section 269ZZB of CTA 2010 (meaning of “group”);

“a 2020 loss carry-back allocation statement” has the meaning given by paragraph 11(1)(a);

“a 2021 loss carry-back allocation statement” has the meaning given by paragraph 11(1)(b);

“the Commissioners” means the Commissioners for Her Majesty's Revenue and Customs;

“de minimis claim” and related expressions have the meanings given by paragraph 8.

- (2) A reference in this Part of this Schedule to the total amount of relief given as a result of a 2020 claim or 2021 claim—
- (a) is to the amount of the deduction or (as the case may be) the total of the deductions made under section 37(3) of CTA 2010 as a result of the claim, but
 - (b) does not include a deduction that would have been made under that provision as a result of the claim if sections 37 and 38 of that Act applied disregarding the modifications made by paragraph 4.

Power to modify

- 14 (1) The Commissioners may by regulations amend or otherwise modify the following provisions of this Part of this Schedule—
- (a) paragraph 6 (non-de minimis claims to be made after financial year);
 - (b) paragraph 7 (non-de minimis claims to be made in tax return);
 - (c) paragraph 8(3) (assumptions in determining if claim is de minimis).

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- (2) Regulations under this paragraph may include supplementary, incidental, consequential or transitional provision (including provision amending or otherwise modifying a provision of this Part of this Schedule not mentioned in subparagraph (1)).
- (3) Regulations under this paragraph are of no effect in relation to a 2020 claim or 2021 claim made before the regulations come into force.
- (4) No regulations under this paragraph may be made after 31 March 2023.

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