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STATUTORY INSTRUMENTS

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**2021 No. 704**

**CORPORATION TAX**

**The Corporation Tax (Carry Back of Losses:  
Temporary Extension) Regulations 2021**

|                                 |         |                             |
|---------------------------------|---------|-----------------------------|
| <i>Made</i>                     | - - - - | <i>at 12.00 p.m. on</i>     |
|                                 |         | <i>14th June 2021</i>       |
| <i>Laid before the House of</i> |         | <i>at 4.00 p.m. on 14th</i> |
| <i>Commons</i>                  | - - - - | <i>June 2021</i>            |
| <i>Coming into force</i>        | - -     | <i>6th July 2021</i>        |

The Commissioners for Her Majesty's Revenue and Customs make the following Regulations in exercise of the powers conferred by paragraph 11 of Schedule 2 to the Finance Act 2021<sup>(1)</sup>.

**PART 1**

**Preliminary**

**Citation and commencement**

1. These Regulations may be cited as the Corporation Tax (Carry Back of Losses: Temporary Extension) Regulations 2021 and come into force on 6th July 2021.

**Interpretation**

2. In these Regulations—

“2020 nominated company” has the meaning given in regulation 3;

“2021 nominated company” has the meaning given in regulation 8;

“the appropriate person”, in relation to a company, means—

- (a) the proper officer of the company for the purposes of section 108 of the TMA 1970<sup>(2)</sup>, or
- (b) such other person as may for the time being have the express, implied or apparent authority of the company to act on its behalf for the purposes of these Regulations; and

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<sup>(1)</sup> 2021 c. 26.

<sup>(2)</sup> 1970 c. 9. Subsection (3) of section 108 was amended by paragraph 2(2)(a) and (b) of Schedule 41 to the Finance Act 2003 (c. 14 (“FA2003”). Subsection (4) of section 108 was inserted by paragraph 2(3) of Schedule 41 to the FA2003.

“ultimate parent” has the same meaning as in section 269ZZB(3) of the Corporation Tax Act 2010(3).

## PART 2

### 2020 loss carry-back allocation statement

#### The 2020 nominated company

3.—(1) A member of a 2020 group (the “2020 nominated company”) may be nominated to submit a 2020 loss carry-back allocation statement on behalf of that 2020 group by—

- (a) the ultimate parent of that 2020 group,
- (b) all of the members of that 2020 group together, or
- (c) any two or more members of that 2020 group together, with the consent of the appropriate person on behalf of the ultimate parent of that 2020 group.

(2) The nomination must be—

- (a) made in writing, and
- (b) signed by the appropriate person on behalf of each company making the nomination.

(3) Only one company may, for the time being, be the 2020 nominated company in respect of a 2020 group.

(4) Once a nomination is made, it has effect until substituted by a new nomination made by—

- (a) the ultimate parent of that 2020 group,
- (b) all of the members of the 2020 group, or
- (c) any two or more members of that 2020 group together, with the consent of the appropriate person on behalf of the ultimate parent of that 2020 group.

(5) Consent is deemed to be given under sub-paragraph (c) of paragraph (1) and sub-paragraph (c) of paragraph (4) where—

- (a) the appropriate person on behalf of the ultimate parent is notified in writing of the companies’ intention to make a nomination, and
- (b) the ultimate parent does not object within 7 days of receipt of the notification.

#### 2020 loss carry-back allocation statement

4.—(1) The company that is, for the time being, the 2020 nominated company may submit a 2020 loss carry-back allocation statement on behalf of the 2020 group.

(2) A 2020 loss carry-back allocation statement must—

- (a) be received by HMRC before 31 March 2023;
- (b) be in writing;
- (c) be signed by the appropriate person in relation to the 2020 nominated company;
- (d) identify the ultimate parent of the 2020 group;
- (e) list the members of the 2020 group;
- (f) list in respect of any 2020 de minimis claims made by any member of the 2020 group—
  - (i) the name of the company making the claim, and

- (ii) the amount of the claim;
- (g) state the total amount of relief given as a result of each of the claims mentioned in subparagraph (f) above; and
- (h) subject to regulation 5, specify the non-de minimis 2020 claims that may be made by any member of the 2020 group, specifying—
  - (i) the name of the company making the claim, and
  - (ii) the amount of the claim.

5. The aggregate of the amounts specified under regulation 4(2)(h) (and any amendment to that specification) and any de minimis claims made by any members of the 2020 group must be less than £2,000,000.

#### **Amendment of the 2020 loss carry-back allocation statement**

6.—(1) The company that is, for the time being, the 2020 nominated company may amend the 2020 loss carry-back allocation statement by notice in writing to HMRC to amend the specification of non-de minimis 2020 claims that may be made by any member of the 2020 group.

- (2) The notice must—
  - (a) be received by HMRC before 31 March 2023;
  - (b) be signed by the appropriate person in relation to the 2020 nominated company; and
  - (c) subject to regulation 5, amend the specification required by regulation 4(2)(h).

#### **Subsequent 2020 de minimis claims**

7.—(1) This regulation applies where—

- (a) a 2020 loss carry-back allocation statement has been submitted, and
- (b) a 2020 de minimis claim is subsequently made by any member of the 2020 group.

(2) In a case to which this regulation applies, the company that is, for the time being, the 2020 nominated company must amend the 2020 loss carry-back allocation statement by notice to HMRC within 30 days of the date on which the 2020 de minimis claim is made.

- (3) The notice must—
  - (a) be signed by the appropriate person in relation to the 2020 nominated company;
  - (b) amend the list required by regulation 4(2)(f) to state—
    - (i) the name of the company making the subsequent 2020 de minimis claim, and
    - (ii) the amount of the claim; and
  - (c) if as a result of the amendment the 2020 loss carry-back allocation statement no longer meets the requirement in regulation 5, amend the specification required by regulation 4(2)(h) to comply with that requirement.

(4) If the 2020 nominated company fails to comply with paragraph (2) or (3) or both, an officer of HMRC may amend the specification required by regulation 4(2)(h) in the 2020 loss carry-back allocation statement as the officer thinks fit to take into account the 2020 de minimis claim mentioned in subparagraph (b) of paragraph (1) by written notice to—

- (a) the company that is, for the time being, the 2020 nominated company,
- (b) the ultimate parent of that 2020 group, or
- (c) both.

## PART 3

### 2021 loss carry-back allocation statement

#### The 2021 nominated company

8.—(1) A member of a 2021 group (the “2021 nominated company”) may be nominated to submit a 2021 loss carry-back allocation statement on behalf of that 2021 group by—

- (a) the ultimate parent of that 2021 group,
- (b) all of the members of that 2021 group together, or
- (c) any two or more members of that 2021 group together, with the consent of the appropriate person on behalf of the ultimate parent of that 2021 group.

(2) The nomination must be—

- (a) made in writing, and
- (b) signed by the appropriate person on behalf of each company making the nomination.

(3) Only one company may, for the time being, be the 2021 nominated company in respect of a 2021 group.

(4) Once a nomination is made, it has effect until substituted by a new nomination made by—

- (a) the ultimate parent of that 2021 group,
- (b) all of the members of the 2021 group, or
- (c) any two or more members of that 2021 group together, with the consent of the appropriate person on behalf of the ultimate parent of that 2021 group.

(5) Consent is deemed to be given under sub-paragraph (c) of paragraph (1) and sub-paragraph (c) of paragraph (4) where—

- (a) the appropriate person on behalf of the ultimate parent is notified in writing of the companies’ intention to make a nomination, and
- (b) the ultimate parent does not object within 7 days of receipt of the notification.

#### 2021 loss carry-back allocation statement

9.—(1) The company that is, for the time being, the 2021 nominated company may submit a 2021 loss carry-back allocation statement on behalf of the 2021 group.

(2) A 2021 loss carry-back allocation statement must—

- (a) be received by HMRC before 31 March 2024;
- (b) be in writing;
- (c) be signed by the appropriate person in relation to the 2021 nominated company;
- (d) identify the ultimate parent of the 2021 group;
- (e) list the members of the 2021 group;
- (f) list in respect of any 2021 de minimis claims made by any member of the 2021 group—
  - (i) the name of the company making the claim, and
  - (ii) the amount of the claim;
- (g) state the total amount of relief given as a result of each of the claims mentioned in sub-paragraph (f) above; and
- (h) subject to regulation 10, specify the non-de minimis 2021 claims that may be made by any member of the 2021 group, specifying—

- (i) the name of the company making the claim, and
- (ii) the amount of the claim.

**10.** The aggregate of the amounts specified under regulation 9(2)(h) (and any amendment to that specification) and any de minimis claims made by any members of the 2021 group must be less than £2,000,000.

#### **Amendment of the 2021 loss carry-back allocation statement**

**11.**—(1) The company that is, for the time being, the 2021 nominated company may amend the 2021 loss carry-back allocation statement by notice in writing to HMRC to amend the specification of non-de minimis 2021 claims that may be made by any member of the 2021 group.

- (2) The notice must—
  - (a) be received by HMRC before 31 March 2024;
  - (b) be signed by the appropriate person in relation to the 2021 nominated company; and
  - (c) subject to regulation 10, amend the specification required by regulation 9(2)(h).

#### **Subsequent 2021 de minimis claims**

**12.**—(1) This regulation applies where—

- (a) a 2021 loss carry-back allocation statement has been submitted, and
- (b) a 2021 de minimis claim is subsequently made by any member of the 2021 group.

(2) In a case to which this regulation applies, the company that is, for the time being, the 2021 nominated company must amend the 2021 loss carry-back allocation statement by notice to HMRC within 30 days of the date on which the 2021 de minimis claim is made.

- (3) The notice must—
  - (a) be signed by the appropriate person in relation to the 2021 nominated company;
  - (b) amend the list required by regulation 9(2)(f) to state—
    - (i) the name of the company making the subsequent 2021 de minimis claim, and
    - (ii) the amount of the claim; and
  - (c) if as a result of the amendment the 2021 loss carry-back allocation statement no longer meets the requirement in regulation 10, amend the specification required by regulation 9(2)(h) to comply with that requirement.

(4) If the 2021 nominated company fails to comply with paragraph (2) or (3) or both, an officer of HMRC may amend the specification required by regulation 9(2)(h) in the 2021 loss carry-back allocation statement as the officer thinks fit to take into account the 2021 de minimis claim mentioned in sub-paragraph (b) of paragraph (1) by written notice to—

- (a) the company that is, for the time being, the 2021 nominated company,
- (b) the ultimate parent of that 2021 group, or
- (c) both.

## PART 4

### General provisions

#### **Time limits**

**13.** The time limits otherwise applicable to the amendment of a company tax return do not apply to any amendment to the extent that it is made in consequence of a 2020 or 2021 loss carry-back allocation statement being submitted in accordance with these Regulations.

#### **Recovery of overpaid relief**

**14.—(1)** If an officer of HMRC considers that a person has received any overpaid relief, the officer may make an assessment in the amount which ought in the officer's opinion to be recovered.

(2) The amount assessed in paragraph (1) is to be treated as an amount to which paragraph 52 of Schedule 18 to Finance Act 1998<sup>(4)</sup> (recovery of excessive repayments etc) applies.

*Justin Holliday  
Joanna Rowland*

Two of the Commissioners for Her Majesty's  
Revenue and Customs

At 12.00 p.m. on 14th June 2021

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(4) 1998 c.36. There are amendments to paragraph 52 but none is relevant.

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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

Section 18 of, and Schedule 2 to, the Finance Act 2021 (ch. 26, “FA21”) provide for a temporary extension to the carry back of trading losses from one year to three years, for losses up to £2,000,000 per 12-month period for companies and groups of companies. This has effect for companies with accounting periods ending between 1 April 2020 and 31 March 2022. A company may not make a claim that exceeds £200,000 unless the total of all other claims made by the company, and any other members of the group of which the company is part, does not exceed £2,000,000. In order to apply this £2,000,000 cap, FA21 requires groups to specify on a loss carry-back allocation statement how the losses are to be applied. These Regulations provide for the requirements for the submission of loss carry-back allocation statements.

Part 1 provides for citation, commencement and interpretation.

Part 2 provides the requirements for the loss carry-back allocation statements for the 2020 financial year. Regulation 3 provides for the nomination of a member of a 2020 group to submit a loss carry-back allocation statement on behalf of the group. Regulations 4 to 7 provide for the submission of a loss carry-back allocation statement and when amendments may or must be made.

Part 3 provides corresponding requirements to Part 2 for the loss carry-back allocation statements for the 2021 financial year.

Part 4 provides for the amendment of company tax returns in consequence of a loss carry-back allocation statement (including provision altering time limits that would otherwise apply) and the recovery of overpaid relief.

A Tax Information and Impact Note covering this instrument was published on 3 March 2021 alongside the Budget and is available on the website at <https://www.gov.uk/government/collections/tax-information-and-impact-notes-tiins>. It remains an accurate summary of the impacts that apply to this instrument.