Chiene+Tait
CHARTERED ACCOUNTANTS

Comment on...

Reforms to Corporation Tax Loss Relief

As of 1 April 2017, wide ranging reforms of the tax loss rules for companies apply. The reforms introduce two main changes to the use of corporation tax losses as follow:

- A greater flexibility to the use of losses carried forward (Relaxation)
- A cap on the utilisation of losses available for offset for larger businesses (Restriction)

Accounting periods which straddle 1 April 2017, are treated as two separate accounting periods (pre- and post- 1 April 2017). Profits/losses are generally time apportioned, unless this gives rise to an unreasonable result which then can be apportioned on a 'just and reasonable basis'.
Please note there are several new and strengthened anti-avoidance provisions in place in respect of the loss reforms which this article does not cover.

What has changed?

Loss relief pre- and post- 1 April 2017

The rules for carried-forward losses before 1 April 2017 in some cases specify certain types of losses may only be carried forward against specific pools of profits. In other cases, there is no restriction to the type of profits that may be used for set-off purposes. For example, surplus management expenses of an investment business or investment company are carried forward against future 'total profits'.

The treatment of trading losses, non-trading loan relationship deficits and other losses have been significantly amended to introduce a combination of relaxations. The rules for 'in-year' relief, group relief for current year losses and the carry-back provisions are broadly unchanged.
Capital losses are unaffected by the loss reforms and continue to only be available for offset against future chargeable capital gains.

Relaxations

Trading losses that arise pre - 1 April 2017 can only be carried forward and set against trading profits of the same trade. Under the relaxations, companies are generally able to carry-forward trading losses arising after 1 April 2017 for offset against **total profits** of subsequent accounting periods. There are however certain criteria that must be met before losses can be carried forward for offset against future total profits.

Non-trading deficits on loan relationships (NTDLRs) arising pre - 1 April 2017 can be carried forward and set-off against non-trading profits of the company only (non-trading profits are total profits excluding any trading profits). In a similar way to trading profits, those NTDLRs arising on or after 1 April 2017 can generally be set-off against total profits, subject to meeting certain criteria.

Other losses post 1 April 2017 (Management expenses, property business losses and non-trading losses on intangible fixed assets) will also benefit from the increased flexibility, subject to certain conditions.

Management expenses no longer take priority by way of automatic deduction from total profits of the following accounting period. The increased flexibility allows a company to 'skip carry forward' all or part of the management expenses to a later year to preserve a deduction for double tax relief or charitable donations that would otherwise be lost.

<u>Group relief</u>
Group relief rules have also been relaxed. Before 1 April 2017, it was not possible to surrender brought forward losses from an earlier period. Subject to detailed rules and conditions, group companies can now surrender most carried-forward losses arising post 1 April 2017. An example of such conditions are as follows:

- The surrendering company's losses may only be surrendered where its losses are unable to be deducted from its own profits during that accounting period.
- The claimant company may only claim group relief carry-forward losses where it has used its own carry-forward losses to the fullest extent.

<u>Terminal loss relief</u>
Relief for a terminal loss pre- April 2017 was only given for the trading loss suffered in the 12 months to the period ending on cessation of trade. This loss could then be carried back three years from the period immediately before the loss-making period and set-off against total profits of these periods.

'New-style' terminal loss relief post 1 April 2017 benefits from including trading losses brought forward to the period of cessation, which can be subsequently carried back three years on an unrestricted basis. This may result in significant corporation tax repayments, especially where the 50% restriction had originally applied.

Restriction

There is a significant restriction on the amount of profits against which brought forward losses can be offset. A '*deduction allowance'* of £5m has been introduced which can be applied for the first £5m of profits. Broadly, where profits exceed £5 million, only 50% of these excess profits can be offset against further available losses. Therefore, profits under £5 million can be offset by losses in full.

This restriction applies to all losses carried forward, whether arising pre-1 April 2017 or post-1 April 2017.

The following losses are unaffected by the restriction:

- Current year loss relief
- Carry-back of trade losses
- Carry-back of NTDLRs
- Terminal loss relief carried back

The deduction allowance of £5m is an annual allowance and is only available per ‘group’ (group broadly follows definition within group relief provisions). Groups must also nominate the member responsible for allocating the deduction. The allowance must be claimed within the corporation tax computation to avoid the carry forward loss restriction of 50% against profits.

It should be noted that the computational rules are exceedingly complex and cover a large number of detailed steps.

How we can help?

Chiene + Tait have an expert corporate tax compliance team, who work closely to give clients the most tax efficient advice available. Please do not hesitate to contact us if you wish to discuss any of the changes above in further detail or require tax planning advice which incorporates these changes.

For further information, please contact:
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- Information correct at April 2018