



Response from ICAS

**Corporate Capital Loss Restriction:
Consultation on delivery**

25 January 2019

About ICAS

1. The following submission has been prepared by the ICAS Tax Board. The Board, with its five technical Committees, is responsible for putting forward the views of the ICAS tax community, which consists of Chartered Accountants and ICAS Tax Professionals working across the UK and beyond, and it does this with the active input and support of over 60 committee members. The Institute of Chartered Accountants of Scotland ('ICAS') is the world's oldest professional body of accountants and we represent over 21,000 members working across the UK and internationally. Our members work in all fields, predominantly across the private and not for profit sectors.

General comments

2. ICAS welcomes the opportunity to contribute to the consultation "Corporate Capital Loss Restriction: Consultation on delivery" issued by HMRC on 29 October 2018.
3. The introduction to the consultation notes that the proposed changes are part of a package of reforms to corporate loss relief "in order to modernise one of the most outdated elements of the tax regime and ensure that companies pay tax when they make substantial annual profits".
4. In our [response](#) to the 2016 consultation on restricting relief for carried forward losses we commented that we supported the principle, set out in that consultation, that relief for carried-forward losses is an important feature of the tax system, ensuring that the tax paid by a company is reflective of its profit over the long term. The restrictions on relief for carried forward losses which have already been implemented clearly undermine this principle and may prevent businesses adopting a long term view, involving the taking of some risks, to ensure their businesses and hence the wider economy continue to grow.
5. The justification for the restrictions already introduced appears to rest solely on exchequer considerations. We cannot see any case for extending them to cover capital losses. Many large companies, particularly trading companies (which tend to have infrequent significant capital gains), already find that it takes a long time to use capital losses. This will be exacerbated by the current proposals. Chargeable capital gains also depend on market effects and (following the withdrawal of indexation allowance) increasingly on inflation – they are not necessarily related to the existence (or otherwise) of "substantial annual profits".
6. The current proposals will add further unwelcome complexity to corporate tax calculations, particularly for large, economically significant companies. Our members continue to be concerned that the ongoing reductions in the corporation tax rate (highlighted in paragraph 1.2 of the consultation) are being pursued at the expense of certainty and stability. Constant changes to claw back tax foregone as a result of rate reductions, mean that affected companies must revise forecasts repeatedly and deal with ever-increasing complexity. This is unhelpful for companies and their investors at a time when Brexit means that investment (including foreign investment) needs to be encouraged rather than deterred.
7. Paragraph 1.23 of the consultation states that "over 99% of companies are forecast to be financially unaffected by the restriction due to the availability of a £5 million annual allowance". Whilst they may be financially unaffected, this comment seems to acknowledge that they will not be completely unaffected. One adverse consequence of the loss restrictions already introduced is that all companies, regardless of their size, need to consider the rules because of the compliance requirements. This is already unhelpful for companies which will not be subject to the loss restrictions due to the allowance – and the position will not be improved by the extension to capital losses, which adds more complexity.
8. The consultation proposes that the £5 million allowance per group introduced for CILR will also cover capital losses. It would be preferable to have a separate allowance for capital losses – not least because this would permit simpler computations. However, if the government decides to proceed with one allowance it will make it even more important to index or regularly review the allowance, as suggested in our response to the CILR consultation. If this does not happen the value of the allowance will be eroded over time, bringing more companies within the restrictions.

Specific questions

Chapter 3 - Proposed approach

Q1. Will the proposed model be effective in achieving the objective of allowing companies flexibility in allocation of the £5 million deductions allowance whilst making minimal changes to the CILR?

9. It would be preferable to have a separate deductions allowance for capital losses. As outlined in our general comments, capital gains and losses are not equivalent to income profits and should be treated differently.
10. A separate allowance for capital losses would also produce simpler computations.

Q2. Could the computation process be made simpler?

11. Yes. As noted in our response to Question 1, having a separate deductions allowance for capital losses would simplify the computations.

Q3. Are there any specific issues relating to capital gains and losses that should be taken into account to ensure fairness in achieving the government objectives?

12. As noted in our general comments many companies, particularly trading companies (which tend to have infrequent significant capital gains), find that it already takes a long time to utilise capital losses.
13. It is also hard to see the justification for treating a substantial capital gain in the same way as substantial trading profits. Following the removal of indexation allowance in computing corporate chargeable gains, significant gains will increasingly reflect the impact of inflation. Restricting the relief for losses which may have arisen years earlier does not appear to be fair.

Q4. What could be done to reduce the administrative requirements of this restriction?

14. When CILR was introduced it was assumed that the majority of companies would not need to consider the extremely complex rules because of the £5 million deductions allowance. The consultation document stated that over 99% of companies were forecast to be unaffected by the restriction due to the availability of a £5 million allowance.
15. However, it subsequently emerged that this was not the case because of the compliance requirements for the new losses regime. Any company which wishes to use brought forward losses against profits arising from 1 April 2017 is required by section 269ZZ CTA 2010 to specify in its company tax return the amount of the company's deductions allowance for the period. This is the case regardless of the size of the company and regardless of whether it will be affected by the loss restriction.
16. The extension of the restrictions to capital losses adds to the complexity and the administrative burden for all companies – not just those large companies which will be subject to the restrictions.
17. Consideration should be given to removing the onerous administrative requirements for companies which will not have their losses restricted because of the £5 million allowance.

Chapter 4 - Anti-avoidance, commencement and transitional rules

Q5. Will the proposed transitional arrangements be effective in the introduction of the capital loss restriction?

18. We have no comments on this question.

Q6. Are there any issues that should be taken into account in the transitional arrangements?

19. We have no comments on this question.

Chapter 5 - Proposals for life assurance companies

Q7. What method of calculation should be used to ensure that the policy objective is met whilst providing a suitable method for life assurance companies?

20. Any mechanism to ensure that individuals investing in assurance based products are not affected, is likely to mean additional complexity with an adverse impact on life assurance companies. It will be very important for the government to listen to the views of the industry on the appropriate method of calculation – as set out in paragraph 5.17.

Chapter 6 - Other considerations

Q8. Do you have any comments on this proposed model for oil and gas companies?

21. We agree that ring-fenced capital gains should be excluded from the scope of this measure.

Q9. Are there any issues surrounding insolvency or cessation of trade that need to be taken into account in this reform?

22. We have no comments on this question.

Q10. Are there any sectors or types of corporate structure that you consider are particularly affected by this change?

23. The real estate sector and life assurance companies could be particularly badly affected by this change. The change also potentially makes the UK less attractive as a location for holding companies.
24. As noted in our general comments above, the cumulative effect of constant changes to the tax regime to counter the impact of the lower CT rate and the resulting ever-increasing complexity is likely to deter rather than encourage investment in UK companies in general.

Q11. Are there any other factors or specific issues that you consider need to be taken into account in this reform?

25. We have no comments on this question.

Chapter 7 - Assessment of impacts

Q12. Do you have any comments on the impacts identified in this Chapter?

26. See our general comments and our response to Question 10.

Q13. Do you consider that there are any other impacts that should be taken into account?

27. See our general comments and our responses to Question 4 and Question 10. The government has been keen to stress that post-Brexit Britain is still open for business, but the message given by the increasing lack of certainty and stability in the tax policy affecting large corporates does not support this aspiration.