



ICAS comments on the draft Finance Bill provisions relating to
corporate losses
(Further draft legislation published on 26 January 2017)

22 February 2017

About ICAS

1. 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.
2. ICAS has a public interest remit, a duty to act not solely for its members but for the wider good. From a public interest perspective, our role is to share insights from ICAS members into the many complex issues and decisions involved in tax and financial system design, and to point out operational practicalities.

Comments

3. ICAS welcomes the opportunity to comment on the further draft legislation on corporate losses, published on 26 January.
4. In view of the very short time allowed for comment and the publication of the legislation in two stages (making it difficult to consider the complete picture) we strongly suggest that the new corporate loss provisions should be subject to a formal short term review by HMRC and the government, so that issues which arise post-implementation can be addressed quickly through amendments to the legislation.
5. These comments relate to the draft clauses covering changes of company ownership and loss buying, in particular, Part 6 of the schedule, which amends s673 CTA 2010. The government response to the consultation suggested (paragraph 4.5) that the new rules on losses (set off against total profits and surrenders to group members) would increase the risks around corporate loss buying.
6. As part of the changes to address the perceived risks, Part 6 (paragraph 50) amends s673 to extend the period, for considering whether there has been a major change in the conduct or nature of a trade, from 3 to 5 years. Companies already effectively have to consider a 6-year period around the date of the change of ownership; this will therefore increase to 10 years.
7. Additionally, companies will also need to consider a period longer than 5 years because s673 (if amended as proposed) goes on to provide that the disallowance of losses will apply *"even if the change is the result of a gradual process which began before the period of 5 years"*.
8. We understand the need to prevent abuse. However, in the absence of evidence in the response document to suggest that there is a problem with abuse of the existing loss buying provisions, we consider that the proposed extension to the period is disproportionate and we are concerned that it will have an adverse impact on commercial acquisitions of companies with losses.
9. For commercial reasons the purchaser of a company is likely to want to take steps to rationalise the acquisition or to integrate it into the existing group as soon as possible. It is likely to be in everyone's interests – employees, shareholders, HMRC and the government - for the acquisition to be successful and for a loss-making company to be turned around so that it can resume profitable trading.
10. The existing 3-year period already imposes burdens and constraints on purchasers, which have to be taken into account when making commercial decisions about acquisitions. It would be an unfortunate and presumably unintended consequence of the

changes, if the proposed 5-year period prevented some commercial acquisitions going ahead, or succeeding, because more onerous tax requirements could not be reconciled with commercial requirements.

11. The draft legislation includes extensions of other anti-avoidance provisions relating to acquisitions and the introduction of a TAAR. We suggest that these should be sufficient to tackle the risks noted in the consultation response. If evidence emerges to suggest that this is not the case, consideration should be given to addressing the abuse(s) identified without inhibiting genuine commercial acquisitions.