



# Corporation Tax Act 2010

## 2010 CHAPTER 4

### [<sup>F1</sup>PART 5A

#### GROUP RELIEF FOR CARRIED-FORWARD LOSSES

### [<sup>F1</sup>CHAPTER 5

#### LIMITATIONS ON RELIEF: CLAIMS UNDER SECTION 188CC

##### Textual Amendments

- F1** Pt. 5A inserted (with effect in accordance with Sch. 4 para. 190 of the amending Act) by [Finance \(No. 2\) Act 2017 \(c. 32\), Sch. 4 para. 23](#)

#### *Introduction*

##### **188EA Overview of Chapter**

This Chapter sets out limitations on the amount of relief which may be given on a claim under section 188CC.

#### *General limitation on amount of relief*

##### **188EB Limitation on amount of relief applying to all claims under section 188CC**

- (1) The amount of group relief for carried-forward losses to be given on a claim under section 188CC (“the current claim”) is limited to whichever is the lesser of—
- the amount mentioned in subsection (2),
  - the amount mentioned in subsection (3), and
  - the amount mentioned in subsection (4).

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- (2) The amount referred to in subsection (1)(a) is the unused part of the surrenderable amounts that are attributable to the specified loss-making period (see section 188EC).
- (3) The amount referred to in subsection (1)(b) is the difference between—
  - (a) the claimant company's relevant maximum for the overlapping period (see section 188ED), and
  - (b) the amount of previously claimed group relief for carried-forward losses for the overlapping period (see section 188EE).
- (4) The amount referred to in subsection (1)(c) is the potential Part 5 group relief amount (see section 188EF).

### **188EC Unused part of surrenderable amounts attributable to specified loss-making period**

- (1) The unused part of the surrenderable amounts that are attributable to the specified loss-making period is the amount equal to—
  - (a) the surrenderable amount for the overlapping period (see subsection (2)), less
  - (b) the amount of prior surrenders for that period (see subsections (3) to (5)).
- (2) To determine the surrenderable amount for the overlapping period—
  - (a) take the proportion of the surrender period included in the overlapping period, and
  - (b) apply that proportion to the surrenderable amounts for the surrender period that are attributable to the specified loss-making period.

The surrenderable amount for the overlapping period is the amount given as a result of paragraph (b).

- (3) To determine the amount of prior surrenders for the overlapping period—
  - (a) identify any prior claims for the purposes of this section (see subsection (4)), and
  - (b) take the steps set out in subsection (5) in relation to each such claim.

The amount of prior surrenders for the overlapping period is the total of the previously used amounts given at step 3 in subsection (5) for all the prior claims.

- (4) A claim is a prior claim for the purposes of this section if—
  - (a) it is either—
    - (i) a claim under section 188CB by any company which relates to the amounts to which the current claim relates (as well as any other amounts), or
    - (ii) a claim under section 188CC by any company which relates to the same amounts to which the current claim relates,
  - (b) it is made before the current claim, and
  - (c) it has not been withdrawn.
- (5) These are the steps referred to in subsection (3)(b) to be taken in relation to each prior claim.

*Step 1* Identify the overlapping period for the prior claim.

*Step 2* Identify any period that is common to the overlapping period for the current claim and the overlapping period for the prior claim. If there is a common

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period, go to step 3. If there is no common period, there is no previously used amount in relation to the prior claim (and ignore step 3).

*Step 3* Determine the previously used amount of group relief for carried-forward losses in relation to the prior claim (see subsections (6) to (8)).

- (6) To determine the previously used amount of group relief for carried-forward losses in relation to a prior claim made under section 188CB—

*Step 1* Take the proportion of the overlapping period for the prior claim that is included in the common period identified at step 2 in subsection (5) in relation to that claim.

*Step 2* Apply that proportion to the amount of group relief for carried-forward losses given on the claim.

*Step 3* Multiply the amount arrived at under step 2 by the fraction set out in subsection (7).

- (7) The fraction is—

$$\frac{AB}{\quad}$$

where—

A is the sum of the surrenderable amounts that are attributable to the specified loss-making period, and

B is the sum of all the surrenderable amounts.

- (8) To determine the previously used amount of group relief for carried-forward losses in relation to a prior claim made under section 188CC—

(a) take the proportion of the overlapping period for the prior claim that is included in the common period identified at step 2 in subsection (5) in relation to that claim, and

(b) apply that proportion to the amount of group relief for carried-forward losses given on the prior claim.

The previously used amount of group relief for carried-forward losses in relation to the prior claim is the amount given as a result of paragraph (b).

### **188ED Claimant company's relevant maximum for the overlapping period**

- (1) The claimant company's relevant maximum for the overlapping period is determined as follows—

*Step 1* Calculate the claimant company's relevant maximum for the claim period in accordance with section 269ZD(4).

*Step 2* Deduct from that amount the sum of—

(a) any deductions made by the company for the claim period

(i) under section 45(4)(b) or 45B(4), or

(ii) under section 303B or 303D by virtue of section 304(5),

(b) any deduction made by the company for the claim period under section 457(3) or 463H(5) of CTA 2009,

(c) any deductions made by the company for the claim period under section 124(5), 124A(5) or 124C(6) of FA 2012, and

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- (d) any deductions made by the company for the claim period which are deductions within any of paragraphs (a) to (i) and (k) of section 269ZD(3).

*Step 3* Take the proportion of the claim period included in the overlapping period and apply that proportion to the amount arrived at under step 2.

(2) In step 2 of subsection (1)—

- (a) in paragraph (a)(i), the references to deductions under section 45(4)(b) or 45B(4) do not include deductions that would be ignored for the purposes of section 269ZB by reason of—
- (i) section 1209(3), 1210(5A) or 1211(7A) of CTA 2009 (losses of film trade),
  - (ii) section 1216DA(3), 1216DB(5A) or 1216DC(7A) of that Act (losses of television programme trade),
  - (iii) section 1217DA(3), 1217DB(5A) or 1217DC(7A) of that Act (losses of video game trade),
  - (iv) section 1217MA(3) or 1217MC(9) of that Act (losses of theatrical trade),
  - (v) section 1217SA(3) or 1217SC(9) of that Act (losses of orchestral trade),
  - (vi) section 1218ZDA(3) or 1218ZDC(9) of that Act (losses of museum or gallery exhibition trade),
  - (vii) section 65(4B) or 67A(5A) (losses of UK or EEA furnished holiday lettings business),
  - (viii) section 269ZJ(1) (insurance companies: shock losses),
  - (ix) section 304(7) (certain losses of ring fence trades), or
  - (x) section 356NJ(2) (pre-1 April 2017 loss arising from oil contractor activities);
- (b) in paragraph (b) the reference to a deduction under section 463H(5) does not include the deduction of a shock loss.

(3) If the amount of the claimant company's relevant profits for the claim period (calculated in accordance with section 269ZD(5)) is less than the amount of the claimant company's deductions allowance for the claim period (determined in accordance with section 269ZD(6)), subsection (1) has effect as if step 1 was modified as follows—

*Step 1* Calculate the claimant company's relevant profits for the claim period in accordance with section 269ZD(5).

(4) If section 269ZD has effect in relation to the claimant company for the claim period with the modifications set out in section 269ZE(1) (special loss cap for insurance companies in certain cases), subsection (1) has effect as if steps 1 and 2 were modified as follows—

*Step 1* Determine, in accordance with section 269ZE(5), the modified loss cap for the claimant company and the claim period.

*Step 2* Reduce that amount by the total of any deductions made by the claimant company for the claim period which are deductions within any of paragraphs (a) to (i) and (k) of section 269ZD(3).

(5) Subsection (2) is to be ignored if subsection (4) applies.

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**Modifications etc. (not altering text)**

**C1** S. 188ED excluded (16.11.2017) by [Finance \(No. 2\) Act 2017 \(c. 32\)](#), [Sch. 4 para. 194\(2\)](#)

**188EE Previously claimed group relief for carried-forward losses**

- (1) To determine the amount of previously claimed group relief for carried-forward losses for the overlapping period—
- (a) identify any prior claims for the purposes of this section (see subsection (2)), and
  - (b) take the steps set out in subsection (3) in relation to each such claim.

The amount of previously claimed group relief for carried-forward losses for the overlapping period is the total of the previously claimed amounts given at step 3 in subsection (3) for all the prior claims.

- (2) A claim is a prior claim for the purposes of this section if—
- (a) it is a claim under section 188CB or 188CC by the claimant company for group relief for carried-forward losses which would be given by way of a deduction from the company's total profits of the claim period,
  - (b) it is made before the current claim, and
  - (c) it has not been withdrawn.

- (3) These are the steps referred to in subsection (1)(b) to be taken in relation to each prior claim.

*Step 1* Identify the overlapping period for the prior claim.

*Step 2* Identify any period that is common to the overlapping period for the current claim and the overlapping period for the prior claim. If there is a common period, go to Step 3. If there is no common period, there is no previously claimed amount in relation to the prior claim (and ignore step 3).

*Step 3* Determine the previously claimed amount of group relief for carried forward losses in relation to the prior claim (see subsection (4)).

- (4) To determine the previously claimed amount of group relief for carried-forward losses in relation to a prior claim—
- (a) take the proportion of the overlapping period for the prior claim that is included in the common period identified at step 2 in subsection (3) in relation to that claim, and
  - (b) apply that proportion to the amount of group relief for carried-forward losses given on the prior claim.

The previously claimed amount of group relief for carried-forward losses in relation to the prior claim is the amount given as a result of paragraph (b).

**188EF The potential Part 5 group relief amount**

- (1) The potential Part 5 group relief amount is determined as follows—

*Step 1* Calculate the maximum amount of group relief that could have been given to the claimant company under Part 5 in relation to losses or other amounts within section 99(1) which the surrendering company had for the specified loss-making

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period. In applying this step, ignore any lack of profits of the claimant company from which deductions could have been made as mentioned in section 137(1).

*Step 2* Deduct from the amount arrived at under step 1 the amount of any group relief actually given to the claimant company under Part 5 in relation to losses or other amounts within section 99(1) which the surrendering company had for the specified loss-making period.

*Step 3* Multiply the amount arrived at following step 2 by the fraction in subsection (2).

*Step 4* Deduct from the amount arrived at following step 3 any group relief for carried-forward losses previously given to the claimant company on claims under section 188CC which are related to the current claim.

- (2) The fraction referred to in step 3 is—

AB

where—

A is the sum of the losses or other amounts within section 99(1)(a), (c), (e), (f) and (g) which the surrendering company had for the specified loss-making period, and

B is the sum of the losses or other amounts within section 99(1) (a) to (g) which the surrendering company had for the specified loss-making period.

- (3) References in subsection (2) to losses or other amounts are references to losses or other amounts only in so far as they were eligible for surrender under Chapter 2 of Part 5.
- (4) A claim under section 188CC is related to the current claim if the surrendering company and the specified loss-making period are the same in relation to both claims.

### **188EG Sections 188EC to 188EE: supplementary**

- (1) If two or more claims for group relief for carried-forward losses are made at the same time, for the purpose of section 188EC and 188EE treat the claims as made—
- (a) in such order as the company making them may elect or the companies making them may jointly elect, or
  - (b) if no such election is made, in such order as an officer of Revenue and Customs may direct.
- (2) For the purpose of step 3 in each of sections 188EC(5) and 188EE(3) the amount of group relief for carried-forward losses given on a prior claim is determined on the basis that relief is given on the claim before it is given on any later claim.
- (3) If the use of any proportion mentioned in subsection (4), would, in the circumstances of a particular case, produce a result that is unjust or unreasonable, the proportion is to be modified so far as necessary to produce a result that is just and reasonable.
- (4) The proportions are those found in—
- (a) section 188EC(2)(a),
  - (b) step 1 in section 188EC(6),
  - (c) section 188EC(8)(a),
  - (d) step 3 in section 188ED(1), and
  - (e) section 188EE(4)(a).

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### **188EH Sections 188EC and 188EE: meaning of “the overlapping period”**

- (1) In sections 188EC and 188EE “the overlapping period”, in relation to a claim for group relief for carried-forward losses, means the period that is common to the claim period and the surrender period (see Requirement 2 in section 188CB(3) and Requirement 2 in section 188CC(3)).
- (2) But if during any part of the overlapping period the relief condition is not met, that part is treated as not forming part of the overlapping period but instead as forming—
  - (a) a part of the surrender period that is not included in the overlapping period, and
  - (b) a part of the claim period that is not included in the overlapping period.
- (3) The relief condition is the condition on which the claim for group relief for carried forward losses is based, that is—
  - the group condition,
  - consortium condition 1,
  - consortium condition 2,
  - consortium condition 3, or
  - consortium condition 4.

*Further limitations on amount of relief that apply in particular cases*

### **188EI Condition 4: companies in link company's group**

- (1) Where—
  - (a) the claimant company makes a claim under section 188CC, and
  - (b) the claim is based on consortium condition 4the amount of relief to be given on the claim is limited by subsections (2) and (3).
- (2) There is a limit on the amount of group relief for carried-forward losses that can be given, in total, on relevant consortium claims made by the link company and group companies.
- (3) That limit is the maximum amount of group relief for carried-forward losses that could be given to the link company on relevant consortium claims—
  - (a) assuming that no relevant consortium claims were made by group companies based on consortium condition 4,
  - (b) assuming that the link company was UK related, and
  - (c) ignoring any lack of profits of the link company from which deductions could be made as mentioned in section 188CK(1).
- (4) In this section—
  - “consortium claim” means a claim made under section 188CC for group relief for carried-forward losses,
  - “group company” means a company that is a member of the same group of companies as the link company (other than the link company),
  - “relevant consortium claim” means a consortium claim in relation to which the surrendering company, the surrender period and the specified loss-making period are the same as is the case for the claim mentioned in subsection (1), and

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“UK related”, in relation to a company, has the meaning given by section 188CJ.

### **188EJ Condition 3 or 4: surrendering company not controlled by claimant company etc**

- (1) This section applies if—
  - (a) the claimant company makes a claim under section 188CC for group relief for carried-forward losses,
  - (b) the claim is based on consortium condition 3, and
  - (c) during any part of the overlapping period, arrangements within subsection (3) are in place which enable a person to prevent the claimant company, either alone or together with one or more other companies that are members of the consortium, from controlling the surrendering company.
- (2) This section also applies if—
  - (a) the claimant company makes a claim under section 188CC for group relief for carried-forward losses,
  - (b) the claim is based on consortium condition 4, and
  - (c) during any part of the overlapping period, arrangements within subsection (3) are in place which enable a person to prevent the link company, either alone or together with one or more other companies that are members of the consortium, from controlling the surrendering company.
- (3) Arrangements are within this subsection if—
  - (a) the company, either alone or together with one or more other companies that are members of the consortium, would control the surrendering company, but for the existence of the arrangements, and
  - (b) the arrangements form part of a scheme the main purpose, or one of the main purposes, of which is to enable the claimant company to obtain a tax advantage under this Chapter.
- (4) The relief to be given on the claim is to be determined as if the surrenderable amount for the overlapping period were 50% of what it would be but for this section (see section 188EC(2) to determine the surrenderable amount for the overlapping period).
- (5) In this section “the overlapping period” is to be read in accordance with section 188EH.
- (6) Section 1139 (“tax advantage”) applies for the purposes of this section.

### **188EK Condition 3 or 4: surrendering company in group of companies**

- (1) This section applies if—
  - (a) the claimant company makes a claim under section 188CC for group relief for carried-forward losses, and
  - (b) the surrendering company is a member of a group of companies.
- (2) The surrendering company's surrenderable amounts for the surrender period that are attributable to the specified loss-making period are to be treated as reduced (but not below nil) by the relevant amount.
- (3) To determine the relevant amount—
  - Step 1* Calculate the group's potential relief.



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*Step 2* Multiply the amount arrived at under step 1 by the fraction set out in subsection (6).

- (4) The group's potential relief is the maximum amount of group relief for carried-forward losses that could be given if every claim that could be made based on the group condition in respect of the surrenderable amounts for the surrender period was in fact made (and for this purpose it is to be assumed that the maximum possible claim is made in each case).
- (5) Before determining the maximum amount of potential group relief for carried-forward losses under subsection (4), take account of any claim made before the current claim that—
- (a) is a claim for group relief for carried-forward losses based on the group condition, and
  - (b) is in relation to losses or other amounts surrendered by a member of the same group of companies as the surrendering company (other than the surrendering company itself).
- (6) The fraction mentioned in step 2 in subsection (3) is—

AB

where—

A is the sum of the surrendering company's surrenderable amounts for the surrender period that are attributable to the specified loss-making period, and

B is the sum of all the surrendering company's surrenderable amounts for the surrender period.]

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