

FINANCE ACT 2009

EXPLANATORY NOTES

INTRODUCTION

Section 23 Schedule 6: Temporary Extension of Loss Carry Back Provisions

Details of the Schedule

3. Paragraph 1(1) provides that a person who has made a trade loss in the tax year 2008-09 or 2009-10 may make a claim under this paragraph if relief is available for an amount of the loss under section 64 of the Income Tax Act 2007 (ITA) and either of two conditions are met. For the purpose of this paragraph a loss in a profession or vocation is treated in the same way as a trade loss (see paragraph 2(2)).
4. Paragraph 1(2) sets out “condition A” which is that the person makes a claim under section 64 of ITA for the trade loss.
5. Paragraph 1(3) sets out “condition B” which is that the person’s total income in both the year in which the loss is made and the preceding tax year is either nil, or does not include any income from which a deduction could be made under a section 64 claim.
6. Paragraph 1(4) sets out the amount of the loss that may be relieved (“the deductible amount”). The deductible amount that may be deducted from profits of the two tax years before the year immediately before the year of loss is subject to the £50,000 limit in paragraph 1(12).
7. Paragraph 1(5) provides that a claim for relief is for the deductible amount to be deducted in computing the person’s total income (for 2005-06 and/or 2006-07) or in calculating the person’s net income (for 2007-08 or 2007-08 and 2008-09, as relevant). The ways in which it may be deducted are set out in sub-paragraphs (6) to (10).
8. Paragraph 1(6) provides that a deduction is only to be made from profits of the trade.
9. Paragraph 1(7) explains how the deductions are to be made in the case of a loss made in tax year 2008-09 where the person makes a claim for relief under section 64 of ITA for tax year 2007-08 (whether a claim for 2007-08 alone or where relief is claimed under section 64 for both 2007-08 and 2008-09). The amount of the available loss for 2008-09 that is not relieved under a section 64 claim for 2007-08 (and 2008-09 if claimed) is deducted firstly from the profits of the trade for the tax year 2006-07 and, if any of the loss remains unrelieved, secondly from the profits of the trade for the tax year 2005-06. The total amount that may be deducted for 2005-06 and 2006-07 cannot exceed £50,000.
10. Paragraph 1(8) explains how deductions are to be made in any other case where the loss is made in tax year 2008-09. The amount of the available loss for 2008-09 that is not relieved under a section 64 claim is deducted firstly from the profits of the trade for 2007-08 and, if any of the loss remains unrelieved, secondly from the profits of the trade for the tax year 2006-07 and thirdly from the profits of the trade for the tax year 2005-06. The total amount that may be deducted for 2005-06 and 2006-07 cannot exceed £50,000.

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11. Paragraph 1(9) explains how the deductions are to be made in the case of a loss made in tax year 2009-10 where the person makes a claim for relief under section 64 of ITA for tax year 2008-09 (whether a claim for 2008-09 alone or where relief is claimed under section 64 for both 2008-09 and 2009-10). The amount of the available loss for 2009-10 that is not relieved under a section 64 claim for 2008-09 (and 2009-10 if claimed) is deducted firstly from the profits of the trade for the tax year 2007-08 and, if any of the loss remains unrelieved, secondly from the profits of the trade for the tax year 2006-07. The total amount that may be deducted for 2006-07 and 2007-08 cannot exceed £50,000.
12. Paragraph 1(10) explains how deductions are to be made in any other case where the loss is made in tax year 2009-10. The amount of the available loss for 2009-10 that is not relieved under a section 64 claim is deducted firstly from the profits of the trade for 2008-09 and, if any of the loss remains unrelieved, secondly from the profits of the trade for the tax year 2007-08 and thirdly from the profits of the trade for the tax year 2006-07. The total amount that may be deducted for 2006-07 and 2007-08 cannot exceed £50,000.
13. Paragraph 1(11) confirms that the sections of ITA listed in this subsection which apply to section 64 of ITA also apply to the relief in this paragraph.
14. Paragraph 1(12) provides that the total amount that may be deducted from the profits of the trade for the tax years 2005-06 and 2006-07 (in the case of a loss made in tax year 2008-09) is £50,000; and that the total amount that may be deducted from the profits of the trade for the tax years 2006-07 and 2007-08 (in the case of a loss made in tax year 2009-10) is also £50,000.
15. Paragraph 2(1) sets out the time limits for making a claim under paragraph 1. For losses made in 2008-09 claims must be made by 31 January 2011 and for losses made in 2009-10 claims must be made by 31 January 2012.
16. Paragraph 2(3) provides that paragraph 1 is subject to paragraph 2 of Schedule 1B to the Taxes Management Act 1970 which sets out the rules that apply where loss relief is given for an earlier tax year to that in which the claim to the relief is made.
17. Paragraph 2(4) provides that sections 61 (Non-partners: losses of a tax year), 62 (Partners: losses of a tax year etc) and 63 (Prohibition against double counting) of ITA apply to paragraph 1 in the same way as they apply to trade loss reliefs in Chapter 2 of Part 4 of ITA.
18. Paragraph 2(6) provides that a reference to section 64 of ITA in paragraph 3(1) of the Social Security Contributions and Benefits Act 1992 (and paragraph 3(1) of the Social Security Contributions and Benefits (Northern Ireland) Act 1992 includes paragraph 1. This ensures that any deduction under paragraph 1 which reduces profits chargeable to income tax also reduces profits in respect of which Class 4 National Insurance Contributions are payable.
19. Paragraph 3 provides for a temporary extension of the corporation tax rules for carrying back trade losses in relation to a maximum £50,000 trading losses incurred in relevant accounting periods ending between 24 November 2008 and 23 November 2009 and a maximum £50,000 trading losses incurred in relevant accounting periods ending between 24 November 2009 and 23 November 2010. Section 393A of the Income and Corporation Taxes Act 1988 (ICTA) continues to allow a one year carry back for trading losses of a relevant accounting period which are not relievably under this paragraph.
20. Paragraph 3(1) provides that the extended three-year carry back of company trading losses applies by virtue of section 393A of ICTA.
21. Paragraph 3(2) provides that the extended corporate loss carry back applies solely to losses arising in a trade in accounting periods ending after 23 November 2008 and before 24 November 2010.

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22. Paragraph 3(3) provides that the maximum amount of losses that may be carried back by a company by virtue of this paragraph is £50,000 for losses arising in accounting periods ending after 23 November 2008 and before 24 November 2009 and £50,000 for losses arising in accounting periods ending after 23 November 2009 and before 24 November 2010 (regardless of the number of accounting periods falling within the each of those periods).
23. Paragraph 3(4) provides that where a loss is made in an accounting period which is shorter than twelve months the amount of the loss that can be carried back from that period by a company is limited to a proportion of the £50,000 limit, determined in accordance with sub-paragraph (5).
24. Paragraph 3(5) provides a formula for calculating the proportion referred to in sub-paragraph (4).
25. Paragraph 3(6) provides that losses unrelated to decommissioning expenditure are relieved before those attributable to decommissioning expenditure. This ensures that where a company's loss making trade falls within the North Sea Oil & Gas tax regime, the company's ability to gain relief under section 164 of the Capital Allowances Act 2001 (decommissioning expenditure) is unaffected.