

EXPLANATORY MEMORANDUM TO
THE CORPORATION TAX (CARRY BACK OF LOSSES: TEMPORARY
EXTENSION) REGULATIONS 2021

2021 No. 704

1. Introduction

1.1 This explanatory memorandum has been prepared by Her Majesty's Commissioners for Revenue and Customs (HMRC) and is laid before the House of Commons by Command of Her Majesty.

2. Purpose of the instrument

2.1 These regulations are supplementary to legislation included in Section 18 of, and Schedule 2 to, the Finance Act 2021 that provides for a temporary extension to the trading loss carry back rules from 12 months to three years for companies and unincorporated businesses.

2.2 The regulations provide for the requirements for the submission of loss carry-back allocation statements that are required for group companies wishing to make claims exceeding a de minimis limit of £200,000. This is subject to an overall group cap of £2,000,000.

3. Matters of special interest to Parliament

Matters of special interest to the Select Committee on Statutory Instruments

3.1 None.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

3.2 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is the United Kingdom.

4.2 The territorial application of this instrument is the United Kingdom.

5. European Convention on Human Rights

5.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

6. Legislative Context

6.1 Section 18 of, and Schedule 2 to, the Finance Act 2021, provide for a temporary extension to the carry-back of trading losses from one year to three years, for losses up to £2,000,000 per 12-month period within the duration of the extension for companies and groups of companies.

- 6.2 The £2,000,000 cap applies in respect of the extended carry-back of losses incurred in accounting periods ending in the period 1 April 2020 to 31 March 2021 and a separate cap of £2,000,000 to the extended carry-back of losses incurred in accounting periods ending in the period 1 April 2021 to 31 March 2022.
- 6.3 The £2,000,000 cap is subject to a group-level limit, requiring groups with companies that have capacity to carry back losses in excess of a de minimis of £200,000 to apportion the cap between group member companies. A group for extended loss carry-back purposes is defined as two or more companies that are in a group at 31 March 2021 (referred to as a ‘2020 group’) and at 31 March 2022 (referred to as a ‘2021 group’).
- 6.4 The legislation requires the 2020 group and 2021 group to submit a loss carry-back allocation statement setting out how the £2,000,000 cap has been allocated across the group if any member of the group wishes to make a non-de minimis claim. These regulations set out the requirements for the provision of the loss carry-back statement.

7. Policy background

What is being done and why?

- 7.1 Existing legislation at Section 37 of the Corporation Tax Act 2010 provides that a company incurring a trading loss in an accounting period can make a claim to offset the loss against total profits of the previous 12 months after first having set the losses against any profits of the accounting period in which the loss occurred.
- 7.2 Due to the impact of the COVID-19 pandemic, some businesses have experienced reduced demand for their products and services, or disruption to their supply chains. This has led to increased trading losses in the short term for many businesses.
- 7.3 Therefore, to provide assistance to an estimated 130,000 companies, the period over which trading losses may be carried back has been temporarily extended to three years providing a cashflow benefit to affected businesses in the form of tax repayments. This is subject to a cap of £2,000,000 per singleton company and per group for each financial year covered by the extension (financial year 2020 and financial year 2021).
- 7.4 The legislation in Finance Act 2021 requires groups that include companies making non-de minimis claims (i.e. those exceeding £200,000) to allocate the £2,000,000 cap among the group members and submit a loss carry-back allocation statement.
- 7.5 This instrument provides the requirements for the content and submission of the loss carry-back allocation statements for the 2020 financial year and the 2021 financial year by a nominated company.

8. European Union Withdrawal and Future Relationship

- 8.1 This instrument does not relate to withdrawal from the European Union.

9. Consolidation

- 9.1 Consolidation is not required.

10. Consultation outcome

- 10.1 No consultation has taken place as this measure was announced at Budget 2021 to support businesses in response to the COVID-19 pandemic.

11. Guidance

- 11.1 Guidance will be published in the Corporation Tax Manual in July 2021. The Policy Paper will also be updated at [Extended Loss Carry Back for Businesses - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/collections/extended-loss-carry-back-for-businesses).

12. Impact

- 12.1 The impact on business is that those businesses to which this measure applies will have access to additional relief for their trading losses through a repayment of tax paid, providing a cashflow benefit to ease their financial pressures.
- 12.2 There is no, or no significant, impact on charities or voluntary bodies.
- 12.3 There is no, or no significant, impact on the public sector.
- 12.4 A Tax Information and Impact Note covering this instrument was published on 3 March 2021 alongside the draft legislation and is available on the website at <https://www.gov.uk/government/collections/tax-information-and-impact-notes-tiins>. It remains an accurate summary of the impacts that apply to this instrument.

13. Regulating small business

- 13.1 These regulations only apply to groups of companies that wish to make claims exceeding £200,000. Therefore, they are unlikely to affect small businesses.
- 13.2 No specific action is proposed in relation to small business or to minimise regulatory burdens on small businesses.

14. Monitoring & review

- 14.1 The approach to monitoring of this legislation is that it will be monitored and assessed alongside the government's package of Coronavirus support measures. The outcome will be subject to internal review throughout the duration of the period for which the legislation applies.
- 14.2 The instrument does not include a statutory review clause, since it is not required under section 28 of the Small Business, Enterprise and Employment Act 2015.

15. Contact

- 15.1 Eva Upali at HMRC Telephone: 03000 542 465 or email: eva.upali@hmrc.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Martyn Rounding, Deputy Director for Corporation Tax losses, at HMRC can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 The Rt Hon Jesse Norman MP, Financial Secretary to the Treasury, can confirm that this Explanatory Memorandum meets the required standard.