Special losses

Sheridan Gray explores the temporary extended loss carry back rules for companies.

Following the pandemic and the struggles this has caused for many companies, the government has introduced a 'special' temporary extension to the trading loss carry back rules for companies. These are examinable in both Association of Taxation Technicians papers 2 and 4.

To be clear these rules apply only to trading losses – not to other losses such as property losses, capital losses and deficits on non-trading loan relationships that a company may have.

Before we take a look at the detail of these special temporary rules, let's remind ourselves of the normal loss relief rules for trading losses incurred by a company.

> "Under the special extension, rather than carry back losses for just 12 months, companies are able to carry back losses for 36 months."

Current period

In the current period, the company can claim losses against its total profits, ie before qualifying charitable donations are deducted. This type of loss relief is an 'all or nothing' loss relief claim – I can remember this because 'All or nothing' was a hit single for O Town in 2001 and later covered by Westlife in 2006 – so that the company has to use as much loss as possible to bring the total profits down to £nil or run out of losses, whichever happens first. In other words, companies cannot choose the amount of trading loss they would like to use in the current period. As a result, qualifying charitable donations could end up being wasted.

A similar problem arises for individuals doing a current year trading loss claim where the personal allowance could end up being wasted.

This is a claim, ie it is not automatic, and it must be made within 24 months after the end of the loss making period. The way I remember this is that the CT600 (corporation tax return) is due 12 months from end of the period of account and the claim must be made within another 12 months.

Key points

- The temporary extension to the trading loss carry back rules apply only to trading losses.
- The extension is only available for losses arising in accounting periods ending between 1 April 2020 and 31 March 2022 inclusive.
- As the rules for companies are an extension of the normal 12 month carry back rule, a current year claim must be made first.
- For the special extended relief, the loss that can be carried back to the earlier two years of the three year carry back period is capped at £2m for '2020 claims' and a further £2m cap for '2021 claims'.

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Carry back 12 months

Once a current period claim has been made, a company can choose to carry back the loss for 12 months against the total profits. Note that there is not as much flexibility in the loss relief claims as there is for individuals, who can make a current and/or prior year claim. Also note that the rules state that the trading losses are carried back 12 months – not just simply one chargeable accounting period. This means that if the prior chargeable accounting period is less than 12 months the company can carry back the loss against the profits of that short accounting period and also against some of the profits of the accounting period before that.

As losses will be carried back against total profits that will have already been subject to corporation tax, a carry back will lead to a repayment of tax for the company which will help with cashflow.

The claim date is the same as the current year claim, ie 24 months after the end of the loss making period.

Now we have recapped the normal rules, let's take a look at the special temporary rules.

Special temporary rules

These rules are only available for losses arising in accounting periods ending between 1 April 2020 and 31 March 2022 inclusive.

The first thing to note is that these rules are an extension of the normal 12 months carry back rule. Under the special extension, rather than carry back losses for just 12 months, companies are able to carry back losses for 36 months against total profits on a last-in-first-out (LIFO) basis. There is a similar set of rules for individuals with unincorporated businesses but with the difference that the losses can only be offset against trading profits not total profits (before qualifying charitable donations).

Some might think at this point that these rules are the same as the terminal loss relief rules. As a brief reminder, terminal loss relief rules allow losses incurred by the company in the final 12 months of trade to be carried 36 months against total profits on a LIFO basis. However, remember terminal loss relief is available only when the company ceases to trade. The special temporary rules are available to a company which is continuing to trade.

As the rules are an extension of the normal 12 month carry back rule, a current year claim must be made first. This loss relief is one that once started, cannot be stopped. In other words, when we extend the carry back we must carry back for the full 36 months if we have enough loss remaining.

There is no restriction on how much loss can be carried back using the normal carry back for 12 months against total

Bella Ltd

Bella Ltd has been trading for many years and continues to trade, preparing accounting periods to 31 March.

Year end	*31 March 2019*	*31 March 2020*	*31 March 2021*	*31 March 2022*
	£	£	£	£
Trading profits	2,000,000	1,500,000	1,000,000	(5,000,000)
Property income	200,000	200,000	200,000	200,000
Chargeable gains	100,000	100,000	1,000,000	25,000

The trading loss in the year ended 31 March 2022 ends within the period 1 April 2020 to 31 March 2022, so the special temporary loss extension rules apply. As the period ends between 1 April 2021 and 31 March 2022 the £2m cap applies for 2021 claims.

Year end	*31 March 2019*	*31 March 2020*	*31 March 2021*	*31 March 2022*
	£	£	£	£
Trading profits	2,000,000	1,500,000	1,000,000	nil
Property income	200,000	200,000	200,000	200,000
Chargeable gains	100,000	100,000	1,000,000	25,000
Total profits	2,300,000	1,800,000	2,200,000	225,000
Current year claim				(225,000)
Carry back loss relief	(200,000)	(1,800,000)	(2,200,000)	
	2,100,000	Nil	nil	nil

Loss memo

Trading loss y/e 31 March 2022	5,000,000
Less: Current year versus total profits	(225,000)
Less: Carry back to y/e 31 March 2021 (unlimited)	(2,200,000)
Less: Carry back to y/e 31 March 2020 (max £2m)	(1,800,000)
Less: Carry back to y/e 31 March 2019 (balance of £2m)	(200,000)
Unrelieved losses	575,000

First, the trading loss must be used in the current period against total profits of £225,000. Once this is done any remaining loss can be carried back 12 months against the total profits of £2.2m for the year ended 31 March 2021. This normal claim is not subject to the £2m limit.

Following this, the special extended loss carry back rules apply. The extended carry back is initially against the total profits of the year ended 31 March 2020, using £1.8m of the loss and then against the total profits of 31 March 2019. As the losses that can be carried to the earlier two years out of the three year carry back period are capped at £2m, it is only possible to use £200,000 (£2m – £1.8m) in the year ended 31 March 2019.

The remaining £575,000 of loss is carried forward, to be used against future total profits.

Valentina Ltd

Valentina Ltd has been trading for many years and continues to trade, preparing accounting periods to 31 December. In the year ended 31 December 2021 Valentina Ltd made a loss of £500,000.

Year end	*31 December 2018*	*31 December 2019*	*31 December 2020*	*31 December 2021*
	£	£	£	£
Total profits	100,000	50,000	400,000	nil

Although Valentina Ltd is able to carry back £500,000 of trading loss, we do not need to consider the £400,000 of losses that are carried back using the normal 12 months carry back claim against the total profits of y/e 31 December 2020 when looking at the de minimis limit. As such the £100,000 of losses that are used in the special extension are less than £200,000, so Valentina Ltd can benefit from the £200,000 de minimis exception.

profits. However, for the special extended relief, the loss that can be carried back to the earlier two years of the three year carry back period is capped at £2m for '2020 claims' and a further £2m cap for '2021 claims'.

A 2020 claim is for losses incurred in all accounting periods ending in the period between 1 April 2020 and 31 March 2021. A 2021 claim is for losses incurred in all accounting periods ending in the period between 1 April 2021 and 31 March 2022.

The £2m cap is a group level cap which means that the total claims for a group cannot exceed £2m for 2020 claims and £2m for the 2021 claims.

Bella Ltd illustrates how the £2m cap works for a single company.

Claims

The claim will usually be made on the corporation tax return which should be being submitted within claim time limit of 24 months from the end of the loss making accounting period.

However, there is an exception for claims in respect of losses below a de minimis limit of £200,000. When looking at the de minimis exception we only consider losses for the extended extra two years, ie not the 'normal' 12 months carry back.

The impact of the de minimis exception is that, although subject to the same two year time limit from the end of the accounting period of loss, the claim can be made without having to submit the corporation tax return, for example by sending a letter to HMRC. This means that the company does not have to wait to finalise the rest of the corporation tax return before submitting the claim and this can therefore help with cash flow.

As with the £2m cap there is a separate £200,000 limit for 2020 and 2021 claims.

The £200,000 de minimis exception is on a company-by-company basis rather than on a group basis. This means that multiple companies in the group may be able to take advantage of the exception.

Valentina Ltd illustrates how the £200,000 de minimis exception works for a single company.

Final thoughts

When considering loss relief it is important that advisers have a good understanding of normal rules before they extend (sadly pun intended) that knowledge for the special extension rules.

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