

Three year loss carry back claim for companies

Introduction

In the 2021 Budget, the Chancellor announced that companies will be able to carry back trading losses three years, rather than just one. This extension to loss relief is available for two years only and is subject to certain caps.

The new rules apply to losses of accounting periods ended at any time in the year ended 31 March 2021 and periods ended in the year ended 31 March 2022. For each of these years of claim, the loss carry back is capped at £2 million.

Claims will not be processed by HMRC until Royal Assent is given to the Finance Bill. This is expected in July 2021. Where the loss exceeds £200,000 and falls in an accounting period ending between 1 April 2021 and 31 March 2022, the claim cannot be made until 1 April 2022.

These rules apply to companies and other entities chargeable to corporation tax. Separate rules apply to sole traders, partnerships and LLPs.

Existing Rules

The pre 2021 Budget rules generally allow a company to offset a trading loss in the following ways:

- Carry forward against future profits and capital gains
- Offset against other profits and gains of the same period
- Surrender to other companies in the same group
- Carry back against other income and capital gains of the previous accounting period

Losses may only be utilised once.

Example 1

Anna Ltd made a trading loss of £500,000 in the year ended 31 December 2020, having made a profit of £100,000 in the previous year. Anna Ltd may carry back the 2020 loss and obtain a repayment of the £19,000 tax paid. The balance of losses of £400,000 may be carried forward and set against future profits.

New Three Year Loss Carry Back

Losses of accounting periods ended in the two year period from 1 April 2020 to 31 March 2022 may now be carried back up to three years. However, relief must first be claimed under the current year offset and one year loss carry back rules. Only the unutilised balance may then be carried back to the two previous years. When carrying back the loss, profits of later years must be offset before earlier years.

The amount of the loss that may be carried back are capped as follows:

Losses of periods ended in the period 1 April 2020 to 31 March 2021 - £2,000,000

Losses of periods ended in the period 1 April 2021 to 31 March 2022 - £2,000,000

Example 2

Continuing Example 1 above, Anna Ltd made profits of £300,000 in the year ended 31 December 2018 and £200,000 in the year ended 31 December 2017.

Of the unused 2020 loss of £400,000 Anna Ltd may carry back £300,000 to the year ended 31 December 2018 and £100,000 to the year ended 31 December 2017, resulting in a repayment of corporation tax paid of £76,000.

If Anna Ltd makes a loss in the year ended 31 December 2021, a three year loss carry back claim will not be possible, since the profits of the year ended 31 December 2018 will have been fully sheltered.

Example 3

Josh Limited made a loss of £1,200,000 in the year ended 30 April 2020, and a loss of £1,500,000 in the 8 months ended 31 December 2020. It makes a further loss of £1,600,000 in the year ended 31 December 2021.

The amount of the loss that can be carried back is:

Year ended 30 April 2020	£1,200,000
8 months ended 31 December 2020	£800,000 (restricted)
Year ended 31 December 2021	£1,600,000

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The first two accounting periods above both end in the period from 1 April 2020 to 31 March 2021. The maximum claim is for the two accounting periods combined is £2 million, so the loss of the second accounting period is restricted.

Claims

Claims will not be possible until the Finance Bill receives Royal Assent. Typically, this is given in July.

Claims to carry back losses of more than £200,000 must be made by submitting a corporation tax return and accounts for the loss-making period. Smaller claims may be made as stand alone claims, in advance of the submission of the corporation tax return, to be incorporated in the return when it is submitted. This allows for accelerated claims for loss relief, and earlier repayments of tax, but the loss should be supported by management accounts.

Companies will need to wait until 1 April 2022 before they can make claims of more than £200,000 in relation to accounting periods ended from 1 April 2021 to 31 March 2022. Smaller claims can be made once Royal Assent is given.

Groups

Additional considerations apply to companies that are members of a group, where the company's loss is £200,000 or more. For this purpose, a group exists where the parent company has 75% of the rights to profits available for distribution or 75% of assets on a winding up.

If a company is a member of a group on 31 March 2021 or 31 March 2022, the £2,000,000 cap operates on a group basis. The group may claim up to £2,000,000 in relation to accounting periods ended from 1 April 2020 to 31 March 2021 and a further £2,000,000 for periods ended from 1 April 2021 to 31 March 2022. A representative of the group must make a formal loss allocation statement, showing how the £2,000,000 cap is allocated.

Example 4

The Ryan group has 20 companies, each with a trading loss of £150,000 in the year ended 30 April 2021. The total loss is £3,000,000. The £2,000,000 cap will not apply, since each company's profit is less than £200,000.

Example 5

The Dolan group has 10 companies, each with a trading loss of £300,000 in the year ended 30 April 2021. The total loss is £3,000,000. The loss carry back will be capped at £2,000,000, and the Dolan group will need to make an allocation of the cap to its group members. Those group members will then be able to carry back losses up to their allocated share of the cap.

Calculation of the £200,000 "De minimis" Cap

When calculating whether a company's loss is more or less than £200,000, it must be assumed that all available capital allowances are claimed in full, and that no losses are surrendered by way of group loss relief. This would prevent companies in the Dolan group above from being able to "engineer" the quantum of their allowable loss so that they fall under the £200,000 threshold, to benefit from the three year carry back.

Caveat

The above is a summary of the draft legislation as published in March 2021. The legislation contains further detailed provisions including anti-avoidance rules, and is subject to change as the Finance Bill passes through Parliament. Advice should be taken before taking or refraining from taking action.

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