



Finance (No.2) Bill 2019-21

Clause 18 & Schedule 2: Temporary Extension of periods to which trade losses may be carried back

BRIEFING FOR MPS ON THE FINANCE BILL BY ICAEW TAX FACULTY

WHO WE ARE

Please see Appendix 1.

EXECUTIVE SUMMARY

1. We propose that amendments are made to s127 ITA 2007 in order to give effect to the stated purpose of paragraph 3(5). This sub-para relates to the extension of the extended loss carry back rules to losses incurred in UK furnished holiday letting (FHL) businesses in the tax years 2020/21 and 2021/22. Our proposed amendment to s127 would ensure that losses from UK FHL businesses in those tax years can be off-set against net income in the current tax year and the previous three years as stated in the FB Explanatory Notes at paragraph 27.

THE MEASURE

2. Schedule 2 part 1 sets out rules that allow individuals to carry back trading losses arising in the tax years 2020/21 and 2021/22 against net income arising in the current tax year and the previous three years. Without this provision, it is possible only to off-set trading losses against net income in the current year or the previous 12 months or carry forward against future trading profits.

DETAILED COMMENTS

The measure

3. Para 3 of Schedule 2 of the Finance Bill sets out various provisions about the relief available under paras 1 and 2. The Explanatory Notes to the Finance Bill state that “Para 3 (5) extends the application of paragraphs 1 and 2 to losses incurred in a furnished holiday letting business.”. We assume this means that the extended loss carry-back rules are intended to apply to UK FHL businesses in the same way that they apply to trades. S127 (1) – (3) treats a UK FHL business as a trade for various aspects of the tax legislation and all UK lettings of furnished holiday accommodation comprised in a person’s UK FHL business are treated as a single trade.

Our concern

4. S127 (3A) ITA 2007 ensures that any losses arising in a UK FHL business can only be carried forward against the profits of the same UK FHL business. It prohibits, amongst

other things, the off-setting of UK FHL losses against other profits of the same period or the previous 12 months. Therefore, in order for para 3 (5) Schedule 2 of the Finance Bill to have the effect described in para 27 of the Finance Bill Explanatory Notes, it will be necessary temporarily to disapply s127 (3A).

Our recommendation

5. We recommend that a further sub-section is added to s127 ITA 2007 to disapply sub-section (3A) in tax years 2021/21 and 2021/22.
6. The effect of this amendment and para 3 (5) Schedule 2 would be to allow losses from UK FHL businesses in the tax years 2020/21 and 2021/22 to be off-set against net income in the current tax year and the previous three tax years.

Suggested amendment

7. Finance Bill Page 101, after line 36, insert after sub-para (5):

‘(5A) Insert after s127(3A) ITA 2007:

“(3B) Sub-section (3A) does not apply to losses incurred in a UK furnished holiday lettings business in the tax years 2020/21 and 2021/22.”’

FURTHER INFORMATION

As part of our Royal Charter, we have a duty to inform policy in the public interest.

Contact details

Daniel Ellis

ICAEW Policy & Public Affairs Manager

T +44 (0)20 7920 8591

M +44 (0)7557 160 953

Daniel.Ellis@icaew.com

APPENDIX 1

ICAEW TAX FACULTY – WHO WE ARE

ICAEW Tax Faculty is internationally recognised as a source of expertise and is a leading authority on taxation. It is responsible for making submissions to tax authorities on behalf of ICAEW and does this with support from over 130 volunteers, many of whom are well-known names in the tax world. ICAEW Tax Faculty's Ten Tenets for a Better Tax System are summarised in Appendix 2.

ICAEW is a world-leading professional body established under a Royal Charter to serve the public interest. In pursuit of its vision of a world of strong economies, ICAEW works with governments, regulators and businesses and it leads, connects, supports and regulates more than 150,000 chartered accountant members in over 160 countries. ICAEW members work in all types of private and public organisations, including public practice firms, and are trained to provide clarity and rigour and apply the highest professional, technical and ethical standards.

APPENDIX 2

ICAEW TAX FACULTY'S TEN TENETS FOR A BETTER TAX SYSTEM

The tax system should be:

1. **Statutory:** tax legislation should be enacted by statute and subject to proper democratic scrutiny by Parliament.
2. **Certain:** in virtually all circumstances the application of the tax rules should be certain. It should not normally be necessary for anyone to resort to the courts in order to resolve how the rules operate in relation to his or her tax affairs.
3. **Simple:** the tax rules should aim to be simple, understandable and clear in their objectives.
4. **Easy to collect and to calculate:** a person's tax liability should be easy to calculate and straightforward and cheap to collect.
5. **Properly targeted:** when anti-avoidance legislation is passed, due regard should be had to maintaining the simplicity and certainty of the tax system by targeting it to close specific loopholes.
6. **Constant:** Changes to the underlying rules should be kept to a minimum. There should be a justifiable economic and/or social basis for any change to the tax rules and this justification should be made public and the underlying policy made clear.
7. **Subject to proper consultation:** other than in exceptional circumstances, the Government should allow adequate time for both the drafting of tax legislation and full consultation on it.
8. **Regularly reviewed:** the tax rules should be subject to a regular public review to determine their continuing relevance and whether their original justification has been realised. If a tax rule is no longer relevant, then it should be repealed.
9. **Fair and reasonable:** the revenue authorities have a duty to exercise their powers reasonably. There should be a right of appeal to an independent tribunal against all their decisions.
10. **Competitive:** tax rules and rates should be framed so as to encourage investment, capital and trade in and with the UK.

These are explained in more detail in our discussion document published in October 1999 as TAXGUIDE 4/99 (see <https://goo.gl/x6UjJ5>).