



Corporation Tax – “loss loophole closure” Rules

Technical Note
20th March 2013

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Foreword

On 20th March 2013 the Chancellor of the Exchequer announced that the Government proposed to introduce legislation in the Finance Bill 2013, having effect from that date, to provide specific restrictions on the availability of relief for losses. The restrictions relate to the surrender of losses for group relief and the treatment of losses in the event of a change of company ownership.

This document provides technical detail on the circumstances and manner in which the proposed legislation will operate.

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Chapter 1: Introduction

1. The UK's loss relief system provides a measure of parity between taxing profits and relieving losses over the life cycle of a business, ensuring that businesses with different patterns of profit and loss pay a broadly similar amount of tax. Relief is based on the following underlying principles:
 - Brought forward trade losses should only be relievable against future profits from the same trade, carried on by the same legal entity;
 - Tax losses should not be transferable against profits of unconnected parties;
 - The movement of losses between companies should only be allowed where they are under common economic ownership for the accounting period when the losses arise.
2. Within those principles companies can gain relief for losses through set off against profits in a number of ways and there are specific loss relief and business re-organisation rules to prevent companies passing the benefit of a loss to a third party. However HMRC have seen a marked increase in companies entering into arrangements to circumvent these rules.
3. Three specific loopholes have been identified. Two provide opportunities for companies to avoid the consequences of the loss buying rules. The third loophole provides an opportunity for companies to convert profits assessable as gross profits into apportioned profits from a controlled foreign company and access greater amounts of group relief than would otherwise be available
4. The Government is addressing these loopholes through three separate amendments to strengthen the current UK loss rules in line with the underlying policy principles. These amendments will have effect from today's date (20 March 2013).
5. Firstly, the current "loss buying" rules in Part 14 of Corporation Tax Act 2010 ("CTA 2010") (change in company ownership) will be extended to apply to transfers of ownership of a shell company (i.e. a company not carrying on a trade, investment business or UK property business) that has non trading loan relationship debits or deficits and/or non trading losses on intangible fixed assets.
6. Secondly, the rules in Chapter 2 of Part 14 (disallowance of trading losses) will be amended so that trading losses are restricted if there is a change or ownership of a company carrying on a trade followed by a transfer of that trade, or part of that trade, to a fellow group company (within Chapter 1 of Part 22 of CTA 2010 (transfers of trade without a change in ownership)).
7. Thirdly, the rules at Part 5 of CTA 2010 (group relief) will be amended so that the amount of chargeable profits of a CFC apportioned to a surrendering company is included in the threshold which certain amounts must exceed before group relief is available to that company.

8. Draft legislation is published in this technical note and this legislation will be introduced in Finance Bill 2013.
9. The amendments to Part 14 of CTA 2010 will have effect in relation to changes in ownership that occur on or after 20th March 2013.
10. The amendment to Part 5 of CTA 2010 will have effect in relation to surrender periods of the surrendering company which end on or after 20th March 2013, with provision to disregard chargeable profits of a CFC for accounting periods ending before that date or which are apportioned as falling before that date.

Chapter 2: Change in ownership of shell company: restriction of relief

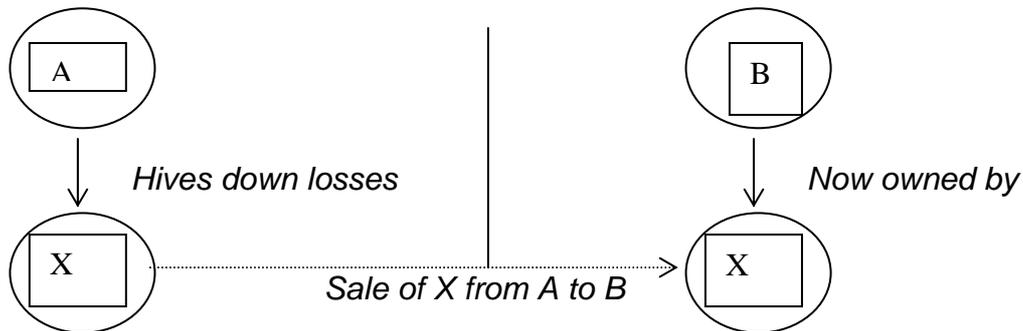
11. Part 14 of CTA 2010 counters loss buying, when a company undergoes a change in ownership, by restricting relief for carried forward corporation tax losses to set off against profits of the same transferred trade from which the loss arose.
12. Part 14 currently applies to restrict the availability of corporation tax losses, in certain circumstances, where there is a change in ownership of a company carrying on a trade, investment business or UK property business.
13. The proposed legislation introduces a new Chapter 5A to Part 14. It applies to a company that is not carrying on a trade, property or investment business (i.e. a “shell company”) and which undergoes a change in ownership.
14. Where new Chapter 5A applies to a shell company the effect is to restrict:
 - the non-trading loan relationship debits to be brought into account for the purposes of Part 5 of the Corporation Tax Act 2009 (“CTA 2009”) which relate to the period before the change in ownership;
 - the carry across of non-trading deficits from loan relationships under Part 5 of CTA 2009 to the accounting period beginning immediately after the change in ownership or any subsequent accounting period; and
 - relief for non-trading losses on intangible fixed assets under section 753 of CTA 2009 which relate to the period before the change in ownership.
15. The proposed legislation treats the accounting period in which the change of ownership took place as two separate accounting periods, one ending and the other beginning with the day of the change. The apportionment of the amounts referred to above follow rules set out in a table at new section 705F (which operates on a similar basis to similar amounts treated under equivalent current provisions in Chapter 3 of Part 14).

Chapter 3: Change in company ownership: company reconstructions

16. Chapter 2 of Part 14 of CTA 2010 counters “loss buying” by restricting relief for carried forward corporation tax losses when a company carrying on a trade undergoes a change in ownership and where,
- within 3 years of that change in ownership, there is a major change in the nature or conduct of the trade, or
 - where the change in ownership occurs after the company’s activities in a trade become small or negligible and before any significant revival of the trade.
17. Chapter 1 of Part 22 of CTA 2010 applies when a trade or part of a trade is transferred from one company to another without a change of ownership (i.e. broadly within the same 75% group). Under section 944(3) of CTA 2010, when a trade or part of a trade is transferred, losses can be carried forward against subsequent trade profits of the successor company as if the predecessor had carried on the trade.
18. Where Chapter 2 of Part 14 applies, section 676 currently restricts relief, for the carry forward of trade losses (contained in section 674), to a successor company (under Part 22) for any loss sustained by a predecessor company. The effect is that if a reconstruction under Part 22 is followed by a change in ownership to which Chapter 2 of Part 14 would apply, the nature and conduct of the trade under both the predecessor and successor are relevant. However, there is a loophole in the operation of section 676 such that it does not apply a restriction in a case where the reconstruction under Part 22 occurs after the change in ownership of the company.
19. The proposed legislation introduces a new section 676 to CTA 2010 which will apply a restriction for relief for losses whether the transfer of the trade under Part 22 occurs before or after the change in ownership of the company.

20. For example

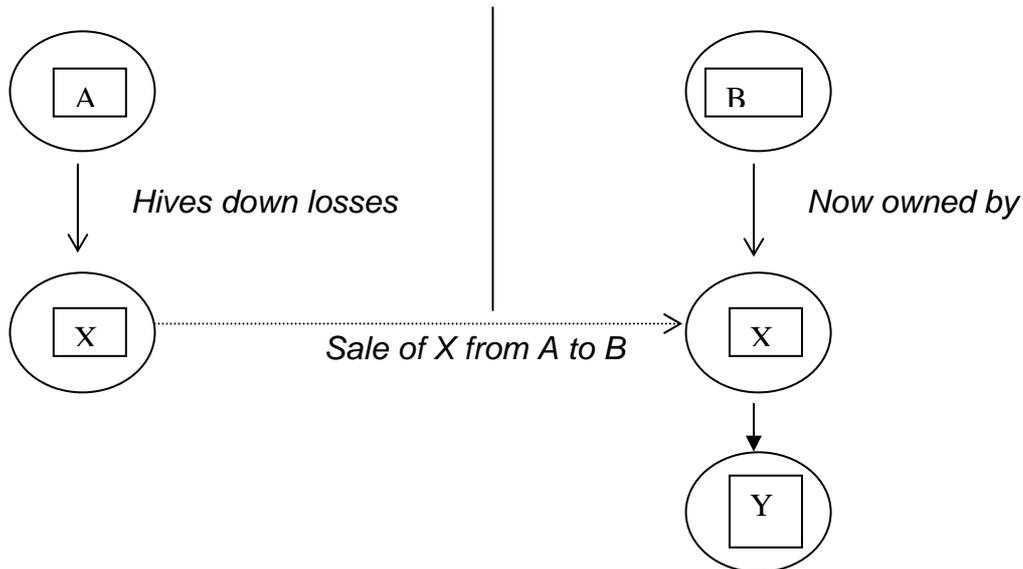
The current rules apply in the following circumstance



Here Company A creates a new subsidiary, X, into which it places its loss making trade. It does so under a Part 22 reconstruction. A does this in order to create a loss making trade which might be attractive to companies with large profits.

If Company B now purchases the loss maker, the existing rules apply to cover any change in the nature or conduct of trade straddling the period of ownership between predecessor A and successor B.

The proposed amendment now covers the following circumstance



Here Company A again creates a new subsidiary, X, under a Part 22 reconstruction. Again, Company B purchases the loss maker, but now Company B carries out a Part 22 reconstruction which previously gave scope for injecting profits of a different trade.

21. The amendment will ensure that the nature or conduct of trade during the period it is carried out by Company Y is relevant. This is because the three year window to consider whether the trade has changed will now include consideration of the trade in Company Y even though there has not actually been a change in the ownership of Company Y.

Chapter 4: Restrictions on surrender of losses: CFC cases

22. There are seven different categories of losses, expenses and deficits that can be surrendered under the group relief rules (see section 99(1)(a)-(g) of CTA 10). Under section 105 of CTA 2010, the four categories listed under section 99(1)(d)-(g) can only be surrendered if, together, they exceed the surrendering company's 'gross profits' for a surrender period. Those four categories are: amounts allowable as qualifying deductions; a UK property business loss; management expenses; and a non-trading loss on intangible fixed assets.
23. Controlled foreign company (CFC) apportioned profits are taxed on the UK company as an amount equivalent to corporation tax. No amount in respect of the CFC apportioned profits is currently included within the calculation of 'gross profits' and therefore they do not impact on the restriction in S105.
24. The proposed legislation amends section 105 so that chargeable profits of a CFC which are apportioned to a surrendering company are included in the threshold which amounts listed under section 99(1)(d)-(g) must exceed before group relief is available. This threshold is described as the "profits related threshold" and is the sum of the surrendering company's gross profits and the chargeable profits of a CFC apportioned to the surrendering company in its surrender period.
25. The threshold covers apportionments under both the old and new rules for CFCs (contained in Chapter 4 of Part 17 of the Income and Corporation Taxes Act 1988 and Part 9A of the Taxation (International and Other Provisions) Act 2010, respectively). The old rules apply to an accounting period of a CFC that straddles 1 January 2013; the new rules apply to an accounting period beginning on or after 1 January 2013.
26. As a UK chargeable company can be subject to a number of CFC apportionments in respect of different CFCs, the proposed legislation refers to the total of all such apportionments.
27. For clarification, the calculation of the amounts available to be relieved under S99(1)(d)-(g) will not prevent the CFC charge being reduced by any of the items that currently can be set off against the charge; these are two separate steps.
28. The proposed legislation is to have effect where the surrender period of the surrendering company ends on or after 20 March 2013. Any chargeable profits for an accounting period of a CFC ending before 20 March 2013 will be disregarded.
29. Chargeable profits of a CFC in an accounting period which falls partly before and partly after 20 March 2013 are to be pro rata time apportioned (or apportioned on a just and reasonable basis). Any of the CFC's chargeable profits apportioned to the part of the period ending before 20 March 2013 are disregarded for the purposes of the proposed legislation.

Chapter 5: The draft legislation

1 Change in company ownership: company reconstructions

- (1) For section 676 of CTA 2010 (disallowance of trading losses where company reconstruction without a change of ownership) substitute –

“676 Company reconstructions

- (1) Subsection (2) applies if, before the change in ownership –
- (a) a trade carried on by another company (“the predecessor company”) is transferred to the company, and
 - (b) the transfer is a transfer to which Chapter 1 of Part 22 applies (transfers of trade without a change of ownership).
- (2) In determining any relief available to the company by virtue of section 944(3) (carry forward of trading losses in successor company), this Chapter applies as if –
- (a) references to a trade carried on by the company included the trade as carried on by the predecessor company or by any predecessor of that company, and
 - (b) any loss sustained by the predecessor company or any predecessor of that company had been sustained by the company.
- (3) Subsection (4) applies if, after the change in ownership –
- (a) a trade carried on by the company is transferred to another company (“the successor company”), and
 - (b) the transfer is a transfer to which Chapter 1 of Part 22 applies.
- (4) In determining –
- (a) any relief available to the company under section 45 (carry forward of trading losses), or
 - (b) any relief available to the successor company or any successor of that company by virtue of section 944(3),
- this Chapter applies as if references to a trade carried on by the company included the trade as carried on by the successor company or by any successor of that company.
- (5) For the purposes of this section a company (“company A”) is a predecessor of another company (“company B”), and company B is a successor of company A, if the first or second condition is met.
- (6) The first condition is that Chapter 1 of Part 22 applies in relation to company A and company B as respectively the predecessor and the successor within the meaning of that Chapter.
- (7) The second condition is that –

- (a) Chapter 1 of Part 22 applies in relation to company A and a third company (“company C”) as respectively the predecessor and the successor within the meaning of that Chapter, and
 - (b) company C is (whether by virtue of the first condition or this condition) a predecessor of company B.”
- (2) The amendment made by subsection (1) has effect in relation to changes in ownership that occur on or after 20 March 2013.

2 Change in company ownership: shell companies

Schedule 1 –

- (a) inserts into Part 14 of CTA 2010 (change in company ownership) a new Chapter 5A (shell companies: restrictions on relief), and
- (b) makes consequential provision.

SCHEDULE 1

Section 2

CHANGE IN OWNERSHIP OF SHELL COMPANY: RESTRICTION OF RELIEF

Amendments of Part 14 of CTA 2010

- 1 (1) Part 14 of CTA 2010 (change in company ownership) is amended as follows.
- (2) In section 672 (overview of Part) –
 - (a) after subsection (3) insert –

“(3A) Chapter 5A restricts relief for certain non-trading deficits and losses where there is a change of ownership of a shell company.”;
 - (b) in subsection (7), omit the “and” at the end of paragraph (b) and after that paragraph insert –

“(ba) “shell company”, see section 705A, and”.
- (3) After Chapter 5 insert –

“CHAPTER 5A

SHELL COMPANIES: RESTRICTIONS ON RELIEF

*Introduction***705A Introduction to Chapter**

- (1) This Chapter applies where there is a change in the ownership of a shell company.
- (2) In this Chapter –
 - “the change in ownership” means the change in ownership mentioned in subsection (1);
 - “the company” means the company mentioned in subsection (1);
 - “shell company” means a company that –
 - (a) is not carrying on a trade,
 - (b) is not a company with investment business, and
 - (c) is not carrying on a UK property business.

705B Notional split of accounting period in which change in ownership occurs

- (1) This section applies for the purposes of this Chapter.
- (2) The accounting period in which the change in ownership occurs (“the actual accounting period”) is treated as two separate accounting periods (“notional accounting periods”), the first ending with the change and the second consisting of the remainder of the period.

- (3) The amounts for the actual accounting period in column 1 of the table in section 705F(2) are apportioned to the two notional accounting periods in accordance with section 705F.
- (4) In this Chapter “the actual accounting period” and “notional accounting periods” have the same meaning as in this section.

Restrictions on relief

705C Restriction on debits to be brought into account

- (1) This section has effect for the purpose of restricting the debits to be brought into account for the purposes of Part 5 of CTA 2009 (loan relationships) in respect of the company’s loan relationships.
- (2) The debits to be brought into account for the purposes of Part 5 of CTA 2009 for –
 - (a) the accounting period beginning immediately after the change in ownership, or
 - (b) any subsequent accounting period,do not include relevant non-trading debits so far as amount A exceeds amount B.
- (3) Amount A is the sum of –
 - (a) the amount of those relevant non-trading debits, and
 - (b) the amount of any relevant non-trading debits which have been brought into account for the purposes of that Part for any previous accounting period ending after the change in ownership.
- (4) Amount B is the amount of the taxable total profits of the accounting period ending with the change in ownership.
- (5) For the meaning of “relevant non-trading debit”, see section 730.

705D Restriction on carry forward of non-trading deficit from loan relationships

- (1) This section has effect for the purpose of restricting the carry forward of a non-trading deficit from the company’s loan relationships under Part 5 of CTA 2009 (loan relationships).
- (2) Subsection (3) applies if the non-trading deficit in column 1 of row 4 of the table in section 705F(2) is apportioned in accordance with section 705F to the first notional accounting period.
- (3) None of that non-trading deficit may be carried forward to –
 - (a) the accounting period beginning immediately after the change in ownership, or
 - (b) any subsequent accounting period.

705E Restriction on relief for non-trading loss on intangible fixed assets

- (1) This section has effect for the purpose of restricting relief under section 753 of CTA 2009 (treatment of non-trading losses) in respect of a non-trading loss on intangible fixed assets.

- (2) Relief under section 753 of CTA 2009 against the total profits of the same accounting period is available only in relation to each of the notional accounting periods considered separately.
- (3) A non-trading loss on intangible fixed assets for an accounting period beginning before the change in ownership may not be—
 - (a) carried forward under section 753(3) of that Act to an accounting period ending after the change in ownership, or
 - (b) treated under that section as if it were a non-trading debit of that period.

Apportionment of amounts

705F Apportionment of amounts

- (1) This section applies for the purposes of this Chapter.
- (2) Any amount for the actual accounting period in column 1 of the following table is to be apportioned to the two notional accounting periods in accordance with the corresponding method of apportionment in column 2 of the table.

<i>Row</i>	<i>1. Amount to be apportioned</i>	<i>2. Method of apportionment</i>
1	The amount for the actual accounting period of any adjusted non-trading profits from the company's loan relationships (see section 705G(2)).	Apportion the amount in column 1 on a time basis according to the respective lengths of the two notional accounting periods.
2	The amount for the actual accounting period of any adjusted non-trading deficit from the company's loan relationships (see section 705G(3)).	Apportion the amount in column 1 on a time basis according to the respective lengths of the two notional accounting periods.
3	The amount of any non-trading debit that falls to be brought into account for the actual accounting period for the purposes of Part 5 of CTA 2009 (loan relationships) in respect of any debtor relationship of the company.	<p>(1) If condition A in section 705G(4) is met, apportion the amount in column 1 by reference to the time of accrual of the amount to which the debit relates.</p> <p>(2) If condition B in section 705G(5) is met, apportion the amount in column 1 to the first notional accounting period.</p>

<i>Row</i>	<i>1. Amount to be apportioned</i>	<i>2. Method of apportionment</i>
4	The amount of any non-trading deficit carried forward to the actual accounting period under section 457(1) of CTA 2009 (basic rule for deficits: carry forward to accounting periods after deficit period).	Apportion the whole of the amount in column 1 to the first notional accounting period.
5	The amount of any non-trading credits or debits in respect of intangible fixed assets that fall to be brought into account for the actual accounting period under section 751 of CTA 2009 (non-trading gains and losses), but excluding any amount within column 1 of row 6.	Apportion to each notional accounting period the credits or debits that would fall to be brought into account in that period if it were a period of account for which accounts were drawn up in accordance with generally accepted accounting practice.
6	The amount of any non-trading loss on intangible fixed assets carried forward to the actual accounting period under section 753(3) of CTA 2009 and treated under that section as if it were a non-trading debit of that period.	Apportion the whole of the amount in column 1 to the first notional accounting period.
7	Any other amounts by reference to which the profits or losses of the actual accounting period would (but for this Chapter) be calculated.	Apportion the amount in column 1 on a time basis according to the respective lengths of the two notional accounting periods.

- (3) If any method of apportionment in column 2 of the table in subsection (2) would work unjustly or unreasonably in any case, such other method is to be used as is just and reasonable.
- (4) For the meaning of certain expressions used in this section, see section 705G.

705G Meaning of certain expressions in section 705F

- (1) This section applies for the purposes of the table in section 705F(2).
- (2) For the purposes of column 1 of row 1 of the table, the amount for the actual accounting period of any adjusted non-trading profits from the company's loan relationships is the amount which would be the amount of the profits from those relationships chargeable under section 299 of CTA 2009 (charge to tax on non-trading profits) if, in calculating that amount, amounts for that period within column 1 of row 3 or 4 of the table were disregarded.
- (3) For the purposes of column 1 of row 2 of the table, the amount for the actual accounting period of any adjusted non-trading deficit from the company's loan relationships is the amount which would be the amount of the non-trading deficit from those relationships if, in

calculating that amount, amounts for that period within column 1 of row 3 or 4 of the table were disregarded.

- (4) Condition A is that—
- (a) the amount in column 1 of row 3 of the table is determined on an amortised cost basis of accounting, and
 - (b) none of the following provisions applies—
 - (i) section 373 of CTA 2009 (late interest treated as not accruing until paid in some cases),
 - (ii) section 407 of that Act (postponement until redemption of debits for connected companies' deeply discounted securities), or
 - (iii) section 409 of that Act (postponement until redemption of debits for close companies' deeply discounted securities).
- (5) Condition B is that—
- (a) the amount in column 1 of row 3 of the table is determined on an amortised cost basis of accounting, and
 - (b) any of the provisions mentioned in subsection (4)(b) applies.”
- (4) In section 721 (when things other than share capital may be taken into account: Chapters 2 to 5)—
- (a) in the heading, for “5” substitute “5A”;
 - (b) in subsection (1), for “5” substitute “5A”;
 - (c) in subsection (4), for “or 5” substitute “, 5 or 5A”.
- (5) In section 725 (provision applying for the purposes of Chapters 2 to 5)—
- (a) in the heading, for “5” substitute “5A”;
 - (b) in subsection (1), for “5” substitute “5A”.
- (6) In section 730 (meaning of “relevant non-trading debit”)—
- (a) in subsection (1), for “and 696” substitute “, 696 and 705C”;
 - (b) in subsections (3)(c), (4)(c) and (5)(b) for “or 696” substitute “, 696 or 705C”.

Consequential amendments

- 2 In Schedule 4 to that Act (index of defined expressions) insert at the appropriate places—

“the actual accounting period (in Chapter 5A of Part 14)	section 705B(4)”
“the change in ownership (in Chapter 5A of Part 14)	section 705A(2)”
“the company (in Chapter 5A of Part 14)	section 705A(2)”
“notional accounting periods (in Chapter 5A of Part 14)	section 705B(4)”
“shell company (in Chapter 5A of Part 14)	section 705A(2)”.

Commencement

- 3 The amendments made by this Schedule have effect in relation to changes in ownership that occur on or after 20 March 2013.

1 Restriction on surrender of losses: controlled foreign company cases

- (1) Section 105 of CTA 2010 (restriction on surrender of losses etc within section 99(1)(d) to (g)) is amended as follows.
- (2) In subsection (2), for “the surrendering company’s gross profits of the surrender period” substitute “the profit-related threshold”.
- (3) In subsection (3), for “those gross profits” substitute “the profit-related threshold”.
- (4) After subsection (3) insert –
 - “(3A) “The profit-related threshold” is the sum of –
 - (a) the surrendering company’s gross profits of the surrender period, and
 - (b) where chargeable profits of a CFC for an accounting period ending in the surrender period are apportioned to the surrendering company in accordance with step 3 in subsection (1) of 371BC of TIOPA 2010 and the surrendering company is in relation to that accounting period of the CFC a chargeable company for the purposes of step 4 in that subsection, the total of the chargeable profits so apportioned.
 - (3B) Where –
 - (a) an accounting period of a CFC ending in the surrender period is one to which (because of paragraph 50 of Schedule 20 of FA 2012) the repeal of Chapter 4 of Part 17 of ICTA does not apply,
 - (b) chargeable profits of the CFC for that accounting period are apportioned to the surrendering company in accordance with sections 747(3) and 752 of ICTA, and
 - (c) the surrendering company is not prevented by section 747(5) of ICTA from being chargeable to tax in respect of the CFC for that accounting period,the profit-related threshold also includes the total of the chargeable profits so apportioned.”
- (5) After subsection (5) insert –
 - “(5A) For the purposes of this section –
 - “CFC” has the same meaning as in Part 9A of TIOPA 2010, except that in subsection (3B) it means a controlled foreign company as defined by section 747(2) of ICTA;
 - “chargeable profits”, in relation to a CFC, is to be read in accordance with section 371BA(3) of TIOPA 2010, except that in subsection (3B) it is to be read in accordance with section 747(6) of ICTA.”
- (6) The amendments made by this section have effect where the surrender period of the surrendering company ends on or after 20 March 2013, but subject to the following.
- (7) For the purposes of section 105(3A)(b) and (3B)(b) of CTA 2010, chargeable profits do not include –
 - (a) chargeable profits for an accounting period within the meaning of Part 9A of TIOPA 2010 ending before 20 March 2013, or

-
- (b) chargeable profits for an accounting period within the meaning of Chapter 4 of Part 17 of ICTA ending before that date.
- (8) Subsection (9) applies where –
- (a) an accounting period within the meaning of Part 9A of TIOPA 2010, or
 - (b) an accounting period within the meaning of Chapter 4 of Part 17 of ICTA,
- falls partly before and partly on or after 20 March 2013.
- (9) For the purposes of section 105 of CTA 2010, the chargeable profits of the CFC for that period, so far as apportioned to the surrendering company as mentioned in subsection (3A)(b) or (3B)(b) of that section (as the case requires), are to be further apportioned on a just and reasonable basis between the two parts of the period, and the chargeable profits referred to in subsection (3A)(b) or (3B)(b) are not to include the chargeable profits apportioned to the part ending before 20 March 2013.

Corporation tax loss relief: anti-avoidance

Who is likely to be affected?

Companies who engage in arrangements which seek to exploit loopholes in corporation tax (CT) legislation to access relief for losses either more quickly or in ways contrary to the underlying principles upon which loss relief legislation is based.

General description of the measure

This measure amends two aspects of rules governing the availability of relief for losses: those relating to the surrender of losses for group relief and the treatment of losses in the event of a business reorganisation resulting in a change of ownership.

Policy objective

This measure clarifies and reasserts the underlying principles on which UK loss relief rules are based and protects both Exchequer revenue and the fairness of the tax system.

Background to the measure

The Government announced this measure at Budget 2013.

Detailed proposal

Operative date

Group relief rules

Amendments to section 105 of the Corporation Tax Act 2010 (CTA 2010) will have effect for group relief surrender periods ending on or after 20 March 2013. The amendments will not apply to chargeable profits of a Controlled Foreign Company (CFC) for a period ending before 20 March 2013, or to any such profits apportioned as arising prior to that date from a period in which that date falls.

Change in company ownership rules

Amendments to section 676 of CTA 2010 and the new Chapter inserted into Part 14 of CTA 2010 will be effective in relation to changes of ownership that occur on or after 20 March 2013.

Current law

Group relief rules

Section 105 of CTA 2010 seeks to ensure that a loss is first relieved against other profits of the company in which it arose before it is available for surrender, by way of group relief, to other companies within a group. It therefore restricts the surrender of certain 'relevant amounts' eligible for group relief unless they exceed the 'gross profits' of the surrendering company i.e. the profits chargeable to corporation tax. 'Relevant amounts' include qualifying charitable donations, UK property business losses, management expenses and non-trading losses on intangible fixed assets. 'Gross profits' do not currently include apportioned CFC profits.

Change in company ownership rules

Where a trade is transferred between companies under common ownership, the normal rules - that company losses should belong to the company and trade that incurred them - are suspended and any losses brought forward are allowed to transfer with the trade. However, different rules apply where trade is transferred between unconnected companies. Part 14 of CTA 2010 sets out that, in such circumstances, restrictions apply if there is a major change in the nature of the trade, investment business or UK property business carried on by a company within three years of the change of ownership.

Proposed revisions

Group Relief rules

Legislation will be introduced in Finance Bill 2013 to amend section 105 of CTA 2010 to add to the threshold (currently 'gross profits') which the 'relevant amounts' must exceed before they can be surrendered by way of group relief. The threshold will now include any apportionments of profit under CFC rules made to the surrendering company. This ensures that where profits are apportioned under CFC rules, any management expenses, for example, would have to exceed those amounts before they could be surrendered by way of group relief.

Change of company ownership rules

Legislation will be introduced in Finance Bill 2013 amending Part 14 of CTA 2010 in two respects:

Firstly, section 676 will be amended to disallow trading losses where, in the relevant circumstances, there is a transfer of the trade within the new group, following the change in ownership of the company.

Secondly, a new Chapter will be inserted into Part 14 CTA 2010 to restrict the availability of non-trading debits, non-trading loan relationship deficits and non-trading losses on intangible fixed assets after a change of ownership of a shell or dormant company.

Summary of impacts

Exchequer impact (£m)	2013-14	2014-15	2015-16	2016-17	2017-18
	+35	+40	+35	+25	+25
	These figures are set out in Table 2.1 of Budget 2013 and have been certified by the Office for Budget Responsibility. More details can be found in the policy costings document published alongside the Budget. This measure supports the Exchequer in its commitment to protect revenue.				
Economic impact	This measure is not expected to have any significant economic impacts.				
Impact on individuals and households	There is no impact on individuals because this measure only affects companies.				
Equalities impacts	No equalities impacts have been identified because this measure only affects companies.				

Impact on business including civil society organisations	This measure is expected to have a negligible impact on businesses and civil society organisations. The number of companies affected by this measure is small, and they will incur a negligible one-off cost in familiarising themselves with these changes. There will be no impact on the annual administrative burdens of businesses as there are no changes to their reporting requirements.
Operational impact (£m) (HMRC or other)	The additional costs for HM Revenue & Customs in implementing this measure are anticipated to be negligible.
Other impacts	<u>Small firms impact test</u> : some small businesses may be affected by this measure but only those that are, will be those engaged in arrangements which access relief for losses either quicker or in ways contrary to the underlying principles upon which loss relief rules are based. Other impacts have been considered and none have been identified.

Monitoring and evaluation

This measure will be kept under review through communication with affected taxpayer groups.

Further advice

If you have any questions about this change, please contact Simon Moulden on 020 7147 2629 (email: simon.moulden@hmrc.gsi.gov.uk) or Barbara Skorupska on 020 7147 3369 (email: barbara.skorupska@hmrc.gsi.gov.uk).