



CORPORATE CAPITAL LOSS RESTRICTION

Issued 24 January 2019

ICAEW welcomes the opportunity to comment on the *Corporate capital loss restriction: consultation on delivery* published by HMRC on 29 October 2018, a copy of which is available from [this link](#).

This response of 24 January 2019 has been prepared by the ICAEW Tax Faculty. Internationally recognised as a source of expertise, the Tax Faculty is a leading authority on taxation and is the voice of tax for ICAEW. It is responsible for making all submissions to the tax authorities on behalf of ICAEW, drawing upon the knowledge and experience of ICAEW's membership. The Tax Faculty's work is directly supported by over 130 active members, many of them well-known names in the tax world, who work across the complete spectrum of tax, both in practice and in business.

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

© ICAEW 2019

All rights reserved.

This document may be reproduced without specific permission, in whole or part, free of charge and in any format or medium, subject to the conditions that:

- it is appropriately attributed, replicated accurately and is not used in a misleading context;
- the source of the extract or document is acknowledged and the title and ICAEW reference number are quoted.

Where third-party copyright material has been identified application for permission must be made to the copyright holder.

For more information, please contact: taxfac@icaew.com

TEXT OF LETTER SENT TO HMRC ON 24 JANUARY 2019

ICAEW welcomes the opportunity to comment on the **corporate capital loss restriction: consultation on delivery** consultation published by HMRC on 29 October 2018.

While we do not have any comments to make in relation to the specific consultation questions there are a number of general points we would like to raise.

Unlike the new rules for carried-forward losses introduced in Finance (No 2) Act 2017 which increased the flexibility of brought forward losses by allowing them to be offset against total profits, the proposal contained in this consultation is purely restrictive in that the amount of gain that can be sheltered will be limited to 50% where profits exceed £5m. It is not clear why the government has taken this approach given that the proposal is intended to align with the reform of other corporate losses. In particular, for many companies it can be rare to make a capital disposal and therefore capital losses can remain unrelieved for lengthy periods of time. This increases the risk to business, in particular where a business becomes insolvent and is unable to obtain tax relief for their losses due to the restriction in place.

The income loss restriction rules have resulted in additional compliance burdens for businesses, including those with profits well below the £5m deductions allowance that are financially unaffected by the new rules. The introduction of a capital loss restriction will require further calculations to determine how much of the deductions allowance should be allocated to each type of loss in addition to separate calculations for the restriction itself. We question why the government did not consult on reforming the rules for capital losses at the same time as the changes were introduced for other types of losses and has instead taken a piecemeal approach which is likely to result in much of the legislation being duplicated into Taxation of Chargeable Gains Act, 1992.

The consultation document proposes that companies that do not have a 31 March 2020 year end will need to split their accounting period into two notional periods either side of April 2020 which we believe will add yet another burden. A simpler approach would be to introduce the rule for accounting periods commencing after 31 March 2020, with a transitional rule in place to counter any obvious anti-avoidance strategy (eg, where a business has changed its year end within the previous three years).

We would be happy to discuss the matters raised in this letter further with HMRC.