BPF Response to UK Government Consultation on Reforms to corporation tax loss relief

To: ct.lossreform@hmrc.gsi.gov.uk

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Introduction

1. The BPF represents the commercial real estate (CRE) sector - an industry with a market value of £1,662bn, which contributed more than £94bn to the economy in 2014 (representing more than 5% of GDP). We promote the interests of those with a stake in the UK built environment, and our membership comprises a broad range of owners, managers and developers of real estate as well as those who support them. Their investments help drive the UK's economic success, provide essential infrastructure, and create great places where people can live, work and relax.

2. The UK's CRE sector provides the nation's built environment and is spreading out from its core investment in offices, shops, leisure facilities and factories, to support the new economy through investments in logistics, healthcare, student accommodation, infrastructure, and increasingly through Build-to-Rent investment in new housing.

3. The sector is one of the most successful in the world at attracting domestic and overseas long-term investment capital into the renewal of the UK's towns and cities.

4. Changes to the UK's long-established loss relief rules were announced by the government at the Budget in March 2016. These changes were not however expected by business, and their timing - taking effect at the same time as the new interest restrictions - means that businesses will face significant practical challenges (and costs) in being ready for the new rules on 1 April 2017. These challenges are not just operational (in terms of compliance): they also impact business planning given the difficulties in identifying the consequences of these reforms on profitability.

5. As set out in our response to the consultation "Reforms to corporation tax loss relief: consultation on delivery" published in May 2016) (the Consultation), we are concerned as to the impact of the reforms in practice. Many businesses will find their tax bills - and their tax compliance bills - increasing significantly over the medium term at least (the revised policy costings show £1.36bn in expected additional revenues from this measure by 2020/2021). Any benefits of the new flexibility are unlikely to be realised for many years: the OBR estimated at the time of the 2016 Budget that the reforms will represent an Exchequer cost by the late 2020s.

6. We very much welcome the steps taken by government to attempt to address a number of the concerns raised in our response to the Consultation, particularly in the context of the potential impact of the reforms on REITs and property development businesses. However, we remain unconvinced that these proposals, even as amended, are the best way to modernise loss relief.

7. Instead, it is likely that the effect of the reforms will be to add further complexity to an already complex system for loss relief - in addition to adding over 90 pages of legislation to the statute book. It is far from clear that the government, even with the amendments it has made to its initial proposals, is delivering with these measures "a simple tax regime so that businesses understand their tax liabilities and can interact easily with the system" in accordance with the policy commitment referred to in

paragraph 2.5 of "Reforms to corporation tax loss relief: response to the consultation" published on 5 December 2016.

8. Finally, in the context of an ongoing review of the corporation tax computation by the Office of Tax Simplification (OTS), it is both surprising and disappointing that the government remains committed to implementing new loss relief rules from 1 April 2017. Given that the OTS's recommendations could obviate the need for the new loss rules, many will wonder whether the government ever intended to heed those recommendations at all. This does little to support the credibility of the OTS.

9. We therefore welcome the opportunity to comment on the draft Finance Bill provisions published on 5 December 2016.

10. Our response is structured as follows

Part I: Key comments
Part II: Comments on the draft legislation
   A. Detailed comments on Schedule 6 Finance Bill 2017 (as published on 5 December 2016)
   B. General comments on "Reforms to corporation tax loss relief – responses to Consultation"
   Appendix 1: Loss carry forward (before and after loss reform)

11. If you would like to discuss any aspect of our comments in more detail, please do not hesitate to contact us.

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Part I: Key Comments

Complexity

12. We welcome the steps taken by government to try to simplify the loss reforms in response to comments received on the original proposals from stakeholders (including the BPF). These steps include:

    12.1. basing the definition of "group" for the purposes of the group deductions allowance on the group relief definition;

    12.2. removing any requirement to apportion current year reliefs between trading and non-trading profits; and

    12.3. continuing to allow relief for property losses against total profits

13. However, even with these changes, the means by which a relatively simple concept[1] is achieved remains incredibly complex.

14. This complexity in the main derives from the underlying structure of company – and group – taxation within the United Kingdom.

15. The maintenance of the schedular system - and the resultant need to "stream" losses – results in multiple orders of priority and allocations throughout the new rules (compounded by the differentiation between pre-1 April 2017 and post-1 April 2017 reliefs – albeit that there are strong fiscal reasons for such differential treatment).

16. Although the UK has various "grouping rules", these fall short of a group consolidation system: something that many other G7 countries offer. Consolidation allows considerably greater flexibility than the UK's schedular system, even after these reforms come into effect. In particular, the lack of full consolidation creates complexity around the operation of the group deductions allowance – and results in the need (in effect) to file twice to obtain the benefit of the allowance (at both group and individual company level).

17. The Office of Tax Simplification (OTS) is currently reviewing how corporation tax works in practice. That review – announced at the same time as the loss reforms – includes the operation of both the schedular system and group taxation. That review could potentially lead to fundamental reform of the schedular system (as the Consultation itself alludes), rendering much of the complexity reflected in the draft provisions unnecessary. Forging ahead with these reforms whilst that review is ongoing – given its relevance – is likely to be interpreted by business as the government having pre-determined its likely response to any final recommendations that the OTS may make on reform to the schedular system.

[1] i.e. Replicating on a carry forward basis the same relief against total profits as is available on a current year basis.

18. Given the timing of the OTS review, we are disappointed that the government is proceeding with these reforms now. The Consultation, coupled with the OTS review, could have provided an opportunity to create a corporate tax system fit for the 21st century – including a regime for loss relief that is simple, comparable with that of other G7 countries and meets the government's objectives.

19. Once again, we therefore ask the government to defer this reform until it has had the opportunity to consider the recommendations to be made by the OTS following its review of corporation tax computations – for example, until after the 2017 Autumn Budget[2].

Transition to the new regime

20. Many of the businesses affected by these reforms will also be affected by changes to the tax deductibility of interest, which the government has also announced will come into effect on 1 April 2017.

21. The combined effect of the proposed interest deductibility rules and the loss reforms on interest expense is not yet fully understood, not least because draft legislation for both measures was only published in full on 26 January 2017. Further, the complexity of both rules makes it incredibly difficult to model.

22. Accordingly, we reiterate our recommendation that the government delays the implementation of the loss reform to (at the earliest) 1 January 2018 (for the reasons given in *Complexity* above) but ideally 1 April 2018. This will allow business time to consider the impact of the new rules and prepare for implementation properly, as well as providing software developers with the time they are likely to need to write in the necessary changes to deal with these reforms. In addition, it will give businesses the opportunity to work through the impact of the rules in the context of their payment on account obligations before a payment is due for a post-commencement period.[3]

23. In any event, regardless of the actual commencement date, If the government decides to continue with the reforms as announced at the Budget, then these new rules should be effective not on the specified date, but instead for accounting periods beginning on or after the commencement date.

24. This measure is not one directed at countering perceived avoidance: instead it is described as being in pursuance of the government's simplification and modernisation agenda. We therefore see no justification for having a "one size fits all" start date.

25. Loss relief works by reference to actual accounting periods. Respecting this underlying principle in relation to these reforms avoids companies having to apply different rules to losses arising within the

[2] For example, with commencement delayed until (at the earliest) 1 January 2018 if no further change is needed as a result of the OTS review. We appreciate that this will impact the modelled Exchequer outcome of the measure: however (i) the Office of Budget Responsibility noted that the modelled numbers were uncertain in any event and (ii) given that the measure reverses at some point, deferral now should also defer the point at which the measure results in a cost to the Exchequer.

[3] For a September year end, the first payment on account for the year to September 2017 (which will include the first post- 1 April deemed accounting period) by 14 April 2017. For December year ends (the majority) it will be 14 July 2017.

same period – and in particular having to make claims to be able to use what is in reality a current year relief in different parts of the same "actual" period[4].

26. We therefore recommend that paragraph 49 of Schedule 6 is amended. These new rules should be effective for accounting periods beginning on or after the commencement date.

Guidance – sooner rather than later

27. The compliance burden for business arising from these proposals alone cannot be underestimated[5].

28. Companies will not only have to familiarise themselves with the detail of the new rules, but will also have to make changes to their compliance processes to reflect the additional monitoring and reporting that will be required.

29. Ignoring intangible asset losses, companies will have to keep track of up to 10 different categories of loss/relief, undertake up to three separate "cap" calculations and choose between up to 8 different claims/disclaimers for "own use" carry forward relief [6].

30. In working out the "cap" for a particular carry forward category (i.e. pre-2017 trading losses and post-2017 (restricted) trading losses; pre-2017 NTDs and post-2017 carry forward reliefs), a company has to carry out multiple individual steps – from determining (and specifying) the deductions allowance allocated to it; to calculating up to three different sets of profits (adjusted total profits, qualifying profits and relevant profits).

31. Further, although the £5m deductions allowance is intended (in practice) to exclude many companies from the loss restriction, this allowance is subject to certain compliance requirements being met. While the allowance spares companies from the brunt of the new loss rules, it is not 'cost-free' from an administrative point of view. Plus, the effect of the draft legislation is that the £5m is a component in the "cap" calculation(s)[7] that have to be undertaken in each accounting period. It is not a simple 'safe harbour' (as arguably implied by the introduction to the Consultation)[8].

32. This means a wide range of companies – from the small to MNEs – with differing levels of tax expertise will have to apply these rules in practice.

33. The legislation – at over 90 pages ignoring regulations - will not be first choice as a "guide" to the new rules for many.

34. Instead, guidance that is clear and simple – but without compromising on the necessary detail – needs to be available as soon as practicable. This not only includes revised sections of the Company

[4] See for example paragraphs 29 and 79 in Part II – Detailed Comments on Schedule 6 Finance Bill.

[5] In monetary terms, the Tax Information and Impact Note published on 5 December 2016 estimates a one-off cost of £20m to £25m,together with an on-going additional cost of up to £5m a year.

[6] See Appendix 1: loss carry forward (before and after CT loss reform).

[7] Under sections 269ZB, s28ZC and 269ZD.

[8] In its response to the consultation, also published on 5 December 2016, the government confirmed that it would not legislate for a simplified calculation (or gateway) for groups with less than £5m profits or losses: this means that all companies with carry forward losses will need to apply at least some of the rules.

Tax Manual, but also updates to the Helpsheets that explain what the rules mean for completing tax returns. The guidance should include examples (both simple and complex) showing how the rules apply to potential “real” fact-patterns – illustrating what this new flexibility means in reality.

35. In addition, the “on the ground” compliance requirements need to be as straightforward as possible. We anticipate that there will need to be changes to the company tax return. We would also hope that HMRC will, in practice, be both practical and flexible in their dealings with groups that have a large number of subsidiaries (which includes many property groups) in relation to administering the group deduction allowance system. This would include providing groups with extra time to meet their compliance obligations under these rules for the first period.

36. Well-written effective guidance and straightforward compliance processes will be fundamental if companies are to be able to find their way through the complexity of the new regime when completing their tax returns (and, even more importantly, required Making Tax Digital filings) in a timely and (hopefully accurate) manner.

Part II: Comments on the draft legislation

We set out below detailed comments on the draft legislation to implement the government's proposed reforms to corporation tax loss relief as published on 5 December 2016 and some general points relating to the comments made in the Responses Document on the further legislation (as published on 26 January 2017). We will be commenting separately on the detail of that further legislation.

In the comments below, references to:

a. paragraph numbers are to paragraphs of Schedule 6 (Carried-forward losses) of the draft provisions for Finance Bill 2017, as published 5 December 2016;

b. CTA 2009 are to the Corporation Tax Act 2009;

c. CTA 2010 are to the Corporation Tax Act 2010;

d. NTD is to a non-trading deficit;

e. pre-2017 trading losses, pre-2017 NTDs, pre-2017 property losses or pre-2017 management expenses are to losses, NTDs, property losses or management expenses (as the case may be)arising in an accounting period ending (or being deemed to end) on or before 1 April 2017;

f. post-2017 trading losses, post-2017 NTDs, post-2017 property losses or post-2017 management expenses are to losses, NTDs, property losses or management expenses (as the case may be) arising in an accounting period beginning (or being deemed to begin) on or after 1 April 2017; and

g. the Responses Document is to "Reform of corporation tax loss reform: response to the consultation" (published 5 December 2016).

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A: Detailed comments on Schedule 6 Finance Bill 2017 (as published on 5 December 2016)

General

1. Given the changes to well-settled loss rules, companies will need to work through the detail of new-style legislation for even the most basic loss relief questions. Where the new rules are basically the same as the old rules in their effect, we ask that the old provisions are replicated – i.e. avoiding “pure” drafting changes - to provide companies with consistency (given their familiarity with the old rules).

2. Likewise, if there is a policy reason for a change in drafting that could equally apply to the existing rules, we recommend that you consider amending the existing rules: again to ensure consistency.

<u>Part 1 – Amendment of general rules about carrying forward losses</u>

Paragraphs 1 - 2

3. No comments

Paragraph 3

4. This amendment ensures that the existing non-trading deficit ("NTD") rules continue to apply to pre-2017 NTDs.

5. However, in certain circumstances, a pre-2017 NTD can be refreshed. In particular, under section 458, a NTD arising in period 1 can become a NTD of a later period (eligible to (continue to) be carried forward under section 457(1)).

6. Refreshing a pre-2017 NTD would not seem to bring it within Chapter 16A. This is because Chapter 16A applies where a company has a NTD under section 301(6) in any accounting period beginning on or after 1 April 2017.

7. Section 301 says that a company has a NTD in an accounting period by reference to its non-trading credits and debits in that period. That indicates that a carried forward pre-2017 NTD will always be separate to, and distinct from, any NTD arising post-2017 as the (excess) debits which it represents are from an earlier period.

8. However, even if the NTD cannot refresh into a post-2017 loss, does the refreshing of that NTD under section 458 mean it then falls outside Chapter 16?

9. Under section 458(4)(a), the NTD is deemed to become a deficit of a first later period. If that first later period is post-2017, then the NTD will be regarded as a deficit for that post-2017 period. As a NTD for a post-2017 period, can section 457 apply?

10. The amendment to section 456 made by paragraph 3 means that section 457 is now limited to NTDs for accounting periods that begin before 1 April 2017. If the relevant first later period commences on or after 1 April 2017, then the NTD is treated (it seems) as a post-2017 NTD and so cannot be carried forward under s457.

11. If this is correct, then any pre-2017 NTD that is the subject of a claim under 458 would seem to be stranded: we assume this is not the policy intention. If so, the drafting of section 458 needs to be amended to allow continued carry-forward of pre-2017 NTDS under the existing rules.

Paragraph 4

Section 463A

12. The existing rules that apply to carry forward of NTDs set out in Chapter 16 CTA 2009 provide that where a company has a NTD, the default position is that the NTD is carried forward - unless a claim is made to treat the NTD in a different manner.

13. The effect of the new Chapter 16A is the same, save that carry forward (although remaining the default position) is subject to making a claim. Although we have no comments on the drafting that achieves this, we would question why a different approach has been taken to achieve the same effect: would it not be preferable (and more straightforward) for the provisions for "new" post-2017 NTDs to mirror those that apply for pre-2017 NTDs (save where there is a policy reason to the contrary): particularly given that taxpayers have familiarity with the existing provisions. (We note that this is the approach taken in relation to the new carry-forward group relief rules, for example.)

Section 463D

14. This replicates s461 CTA 2009: the effect of these two provisions is the same, but the drafting approach is different: see comments on section 463A above.

15. In addition, is there a reason why this contains no equivalent of sections 461(5)?

Section 463F(2)

16. The drafting approach taken in setting the limit on the amount available to carry back offers more clarity than the existing statutory language in section 462(2): can section 462(2) be amended to refer to "no greater than" rather than the current formulation "equal to the lesser of"?

Section 463F(5)

17. This sets out an order of priority for reliefs, and generally mirrors s463. The one difference is that carry-back relief for a post-2017 NTD can only be claimed after any relief has been given for a current year NTD (whether a pre-2017 or post-2017 NTD).

18. Are we correct that the reference to section 459(1)(a) will, in practice, only be of limited relevance (i.e. until 1 April 2018). If so, we would ask that this be set out in guidance so it is clearly acknowledged that this reference is redundant after that date.

Section 463H

19. Under the existing rules for carry forward, a NTD is carried forward to the next accounting period and automatically reduces non-trading profits unless a claim is made to (in effect) "skip" an accounting period.

20. The new rules for carry forward of post-2017 NTDs provide that a NTD will carry forward automatically but will only offset total profits if a claim is made: to the extent a claim is not made, the re-application of section 463G suggests a continual rolling over of that NTD until sufficient claims are made to (in effect) "use it up", but without that NTD being "refreshed". This differs from the position under section 456 where the deficit is refreshed to become (in effect) a NTD of the later period (section 458(4)(a)). We assume that the position differs from that for pre-2017 NTDs because of the need to build in the arrangements for claims (for use of carry forward NTDs and carry forward group relief): is that correct?

21. In this context, please can the guidance clarify the manner in which the re-application of carry forward works on an ongoing basis, where no claims are made under section 463G for several accounting periods.

22. For example, assume a company has an accounting period ending 31 March. A NTD arising in the 2017/18 period would be carried forward to 2018/19. If a claim is not made to use it in that period, the NTD continues to carry forward as section 463G re-applies - but applying to 2018/19 as the "later period" as a result of section 463H(2)(b) and not as a deemed deficit period: is this correct?

23. If a claim is not made in 2018/19, the NTD is carried forward to 2019/20 which is the "first accounting period after the later period". If no claim is again made, section 463H seems to suggest that the first accounting period after the later period (2019/20) then becomes the later period itself under sub-section 1(a): is this correct?

24. If so, then the re-application in section 463G applies anew to that new "later period" (with the substituted references) directly - i.e. the fact that there was an intermediate application of s463G to an earlier later period is disregarded.

25. The manner of the re-application of section 463G means that the NTD remains a NTD that arose in 2017/18 (and at no point is it deemed to be a deficit arising in a period to which it has been carried forward). Is this correct?

Paragraph 5

26. No comments.

Paragraph 6 (and Paragraph 39)

Different pools of management expenses?

27. It would be helpful if guidance includes practical examples of how section 1223 works as amended (particularly in relation to the various pools of management expenses implicitly created by its operation in practice).

Impact of the straddling period

28. If a company has an accounting period that straddles 1 April 2017, does it have to make a claim to carry forward any management expenses arising in the (deemed) accounting period ending 31 March to the remainder of its actual accounting period? This seems to be the effect of the amendments to section 1223 in conjunction with paragraph 49.

29. If so, then pre-2017 management expenses are treated differently to pre-2017 trading losses and NTDs, which carry forward automatically subject to disclaimer. We see no reason why a claim should be required in respect of such expenses within what is (in reality) a single accounting period, even if claims are required in relation to successive period.

"Excess" within section 1223(1)

30. Given the changes to section 1223(1), is "excess" the applicable term for subsection (3)?

31. Section 1223(3A) excludes from the "excess" any amounts relieved under Part 5 or 5A. This relies on section 188C to identify which Part applies to an excess - whereas for property losses, the distinction is set out within section 62 itself (see section 62(5D)): should section 1223(3A) to (3E) be amended, given the similarity in carry forward with property losses?

Paragraphs 7 - 9

32. No comments

Paragraph 10

Claim v disclaimer

33. We welcome the change that means companies have flexibility in relation to use of pre-2017 and post-2017 losses. However we are unsure why relief for post-2017 losses has to be claimed, but relief for pre-2017 losses has to be disclaimed.

34. For trading losses, this asymmetry is even harder to understand given that section 45B (which replicates section 45 in substance) requires a claim. Should all provisions be subject to the same claims process: i.e. a positive claim for use of the losses, not a mix of claim and disclaimer, for consistency? This would facilitate compliance by applying the same procedure to all loss claims. Otherwise there is effectively within the system a presumption (or perhaps more accurately a bias) as to using pre-2017 trading losses "first"; and a risk of error in relation to "checking" boxes in a company tax return, given that, other than for pre-2017 trading losses, carry forward reliefs need to be claimed).

Company tax return

35. In addition, will the company tax return be updated to include boxes relating to each type of loss (differentiating between pre-2017 and post-2017 amounts for trading losses and NTDs etc.), to facilitate compliance? The current return includes a single box for each category of carry forward relief (see boxes 4, 20, 24 and 26 and also page 7): these will not accommodate the re-classification of losses and other reliefs, or the claims required to be made, under the reforms.

Impact of the straddling period

36. Finally, under the provisions as currently drafted, if a company has a pre-2017 trading loss that arises in a (deemed) period to 31 March 2017, it will carry forward automatically to offset trading profits in the remaining part of its actual period (the new deemed accounting period beginning on 1 April 2017). However a company can choose to disclaim that carry forward by specifying the (deemed) period that starts 1 April 2017 and ends when the actual period ends: is that correct?

Paragraph 11

Section 45A

37. Given that one of the conditions in section 45A is that the trade was (in the loss-making period) and continues to be (in the current period) carried on a commercial basis with a view to making a profit (as a result of the section 44 condition), is the "small or negligible" requirement needed?

38. The rationale for this requirement is concern that a company continues a defunct trade simply to ensure that carried forward losses can be off-set against total profits (see the Responses Document at paragraph 4.6). However, if a trade is being carried on artificially, would it be carried on "commercially": i.e. would section 44 deal with this in any event? In particular, there may be commercial or economic reasons why a trade becomes "small", but the approach taken does not have regard to these - and furthermore does not cater for what happens if there is a revival (see comments on section 45D).

39. If the "small or negligible" condition remains, will the same principles apply to determining if a trade has become "small or negligible" as apply for the purposes of section 673(3) CTA 2010 in relation to the activities of a trade?

40. Practical examples of when this could apply should be included in guidance given the importance in relation to the availability of (full) loss relief.

Section 45B

Streaming losses

41. One of the stated objectives of the reforms is to modernise loss relief.

42. The cap under section 269ZB (that applies where losses are either pre-2017 or subject to section 45B) is determined by reference to (aggregate) trading profits.

43. To simplify the calculation for post-2017 trading losses, and thus truly modernise the rules, could the same approach be taken in section 45B: i.e. this more restricted carry forward would be against all trading profits in a company? As currently drafted, the cap is calculated by reference to aggregate trading profits - but the company has then to "stream" losses to specific trades in applying that cap.

44. Our concern here is that, although the consultation distinguishes between pre-2017 and post- 2017 losses, the approach to post-2017 trading losses reflected in section 45B means that current streaming potentially continues even when pre-2017 trading losses have been used up. As losses reflect an economic cost to the company, the combined effect of the restrictions and section 45B is that the

company's taxable profit will not reflect its economic reality. Existing anti-avoidance provisions could be adapted to address the risk of transfers of trades to access such losses.

45. We appreciate that this creates a distinction between multi-trade companies and groups with members carrying on a single trade (given section 45B losses are excluded from carry forward group relief and so cannot offset another group member's trading profits). However, absent the UK moving to a consolidation system, a distinction between solus and group taxation will always remain.

46. That being said, if section 45B only applied where section 44 was triggered (see comments on section 45A above), then restriction of losses arising from a non-commercial activity would be equitable.

Interaction of carry forward rules

47. Can guidance set out (in simple terms) the effect of the new trading loss provisions (sections 45A to 45E), so taxpayers can see how they fit together (particularly as the headings do not provide a clear signpost)? In relation to section 45B, this seems to be (basically) that if the conditions are not met, carry forward relief reverts to the pre-2017 rules: i.e. trading losses can only be off-set against trading profits.

Section 45C

48. The new rules for carry forward of post-2017 trading losses provide that a trading loss will carry forward automatically but will only offset total profits if a claim is made. If and to the extent a claim is not made, the re-application of section 45A suggests a continual carry forward.

49. In this context, we ask that guidance clarify how the re-application works on an ongoing basis where a trading loss is carried forward for several periods. The drafting is very efficient: but lacks the immediate clarity of section 45(4)(a), which governs trading loss carried forward currently. Guidance can confirm at a glance that the same principle applies, although expressed differently.

50. For example, assume a company has an accounting period ending 31 March. A trading loss arising in the 2017/18 period is carried forward to 2018/19. If a claim is not made to use it in that year, the trading loss continues to carry forward as section 43C re-applies s45A(3)-(7): 2018/19 is a "later period" and 2019/20 is the "further period". Section 45A(3) carries forward that loss to the further period,

51. If no claim is made in 2019/20, then it seems that the re-application in section 45C applies anew to 2019/20 as a "later period": section 2019/20 is a later period because it was initially a further period to which the loss was carried forward. Is this correct?

Section 45D

Guidance?

52. See comments on section 45C and at paragraph 47 above.

Revival of trade?

53. In this context, should the legislation allow for a reversal of section 45D (i.e. losses switch back to section 45A if there is a considerable revival of the trade - borrowing from the approach taken in section 673(3) CTA 2010 on losses where there is a change of ownership.

Section 45E

54. See comments on section 45C.

Section 45F

Reduction in activity prior to cessation

55. Section 45F only applies when a trade ceases. Depending on the nature of the trade, it could become small and negligible in an earlier period. That reduction in activity level would be a precursor to the cessation.

56. Under the carry forward rules, if a trade becomes small or negligible, loss relief switches from section 45C (relief against total profits) to section 45D (relief against trading profits). This means that in the (later) terminal period the unrelieved amount will be restricted because of its re-characterisation in (say) the preceding period (see section s45D and 45F(7)(b)). This will restrict its use under section 45F, even where the losses are "carried back" to relieve profits in a previous period in which (when they were originally carried forward) they were eligible for relief against total profits under section 45A.

57. In such a situation, we consider that the carried forward losses should revert to their original character (within section 45C). In this context, the Company Tax Manual at CTM06390 states that the inclusion of a "small and negligible" test within section 673(3) was "designed to prevent the carry forward of CTA10/S45 losses in cases where a company's trade was dying or had, for all practical purposes died, but it was difficult to persuade tribunals to find it had actually ceased and become a dormant shell". This rationale also applies to section 45F.

58. One possible way of doing this is to ensure that any losses that become subject to section 45B in the relevant three year period because of section 45D are treated as losses carried forward under section 45A in the terminal period.

59. An example of where this could be in issue relates to property development.

60. Assume a group sets up a single purpose company to build a large residential development. As it constructs the property, it sells certain flats off-plan and continues selling after completion. However, market developments mean that, having sold the vast majority of the flats, the developer struggles to sell the last remaining few. Its trade will not cease until those last flats are sold. There will be no further trading activity as the company will not carry on any other development.

61. If the retention of those final few flats means that the developer's activities have become small or negligible, the loss restriction applies. If actual cessation is say two years later (when the final flats are sold), section 45F applies but there may be insufficient profits in those two years to use up the carried forward losses if section 45B applies (which section 45F as drafted requires).

62. Given that section 45F(4) does not allow relief to be given for a period before the loss-making period, there seems limited risk of obtaining excessive relief in these circumstances.

Restriction on terminal relief pre-2017

63. Section 45(4)(c) prevents relief being given in a period before 1 April 2007. This is said to be because the loss restriction did not apply prior to that date: so losses arising before that date could be utilised in full (assuming sufficient profits).

64. However, given that the purpose of this relief is linked to ensuring that the relevant trader is taxed on its economic profit over its trading period (particularly where the activity has a fixed term), the distinction seems arbitrary. Further, given that the relief only applies where the cessation is post 1 April 2017, and the limitation in limb (b), there would seem to be limited cost implications if the restriction in subsection 4)(c) were to be deleted.

Transfers of activities prior to cessation

65. Section 45F is subject to an anti-avoidance provision that replicates section 41 CTA 2010, which was enacted in 2009 to counter a specific avoidance scheme. This applies potentially where a company transfers its trade to a non-corporation taxpayer.

66. Where a company transfers activities forming part of its trade to a company (a) within the charge to corporation tax and (b) under common control, section 944 CTA 2010 applies where the successor company itself assumes the trade. Under section 944, relief under section is given to the successor in relation to a loss which is made by the predecessor in the transferred trade, and for which relief would have been given under that section to the predecessor had it continued to carry on that trade.

67. First, we assume that section 944 CTA 2010 will be amended to take account of the new loss carry forward provisions and that the intention is that the successor "stands in the shoes of" the predecessor in relation to the type(s) of carry forward available: Is this correct? If so, how will section 945 be applied across different losses?

68. Secondly, we assume section 45F will be excluded where section 944 applies (as happens with section 39)?

69. Thirdly, using the example above, what would be the position for the developer if, rather than wait until it sells the final flats, it decides to sell them to another company with which it is connected. After all, at this point, construction is over - and waiting to see when the market turns may not be an attractive proposition.

70. At the point of sale, the developer ceases its trade and so section 45F would be in point. Depending on the facts, the developer may have the ability to re-apply carry forward relief to its final three years profits at that point: if it retained those last few flats, cessation would only occur when the final flat was sold (at which point the developer's final three years' profits could be minimal given the limited sales activity).

71. The successor company may itself acquire the properties on trading account: i.e it buys the properties with a view to resale. If so, would the transfer of a small number of flats for on-sale be regarded as (a) a transfer of a trade to which section 944 would apply precluding the availability of

section 45F relief to the develop or (b) a sale by the developer of its trading stock in pursuance of its trade. Is the answer dependent on scale?

72. Although the characterisation of such a transaction is a question under current law as much as under the new legislation, the restriction on loss carry-forward coupled with section 45F means the answer to this question could now have material consequences. Terminal loss relief under section 39 would not be relevant to a developer as the final period should not be loss-making. Section 45F however would be relevant.

73. If the successor acquired the properties on investment account (for example to let out and possibly sell in the future when market conditions recovered), this would not be an issue.

74. We therefore consider that guidance could usefully comment on the application of these provisions in this context.

Terminal loss

75. Finally, given the existing terminal loss relief in section 39 CTA 2010, should this be re-named to differentiate it from the existing relief?

Section 45H

76. We ask that HMRC set out in guidance how this provision would be applied: although section 41 CTA 2010 (which it replicates) was originally introduced in Finance Act 2009 to counter a specific avoidance scheme, its terms are potentially of broader application.

Paragraph 12

77. No comment

Paragraph 13

Guidance

78. Again, it would be helpful for guidance to include practical examples of how sections 62 and 63 work as amended (particularly in relation to the various pools of property losses required to be monitored as a result of the changes).

Impact of the straddling period

79. If a company has an accounting period that straddles 1 April 2017, does it have to make a claim to carry forward any losses arising in the (deemed) accounting period ending 31 March to the remainder of its actual accounting period? This seems to be the effect of section 62(5A) and paragraph 49. If so, then pre-2017 property losses are treated differently to pre-2017 trading losses and NTDs, which carry forward automatically subject to disclaimer. We see no reason why a claim should be required in respect of losses within what is (in reality) a single accounting period, even if claims are required in relation to successive periods.

Paragraph 14

80. Should the amendment in paragraph 14(3) be to "that accounting period" to avoid any misunderstanding as to the combination of "next"s?

81. See also comments on paragraph 13: the same issue arises here (i.e. being required to make a claim to use a relief within the same actual accounting period).

Part 2 – Restrictions on obtaining certain deductions

Paragraph 16

Sections 269ZB, 269ZC and 269ZD

Simplification

82. Each of these sections applies to determine the cap imposed on loss utilisation. The concepts used in each are very similar: in fact, they share defined expressions and some provisions are basically repeated in each individual section. We consider that the drafting could be simplified and made easier to understand by minimising potentially unnecessary duplication.

83. For example:

83.1. each section defines a "relevant maximum". We ask that instead this expression be adapted to reflect its purpose in each section, so each "relevant maximum" can be distinguished from the others by its purpose, rather by section number.

So, for example, the relevant maximum in section 269ZB would become the "relevant trading maximum"; the one in section 263XD the relevant non-trading maximum" and the one in section s269ZD could either remain the "relevant maximum" (as eventually this should be the only relevant "relevant maximum" for companies) or amended to "relevant total maximum". Making such a change would help ensure clarity in discussions with HMRC officials on compliance matters, as well as internally. Very few in practice would refer to section numbers in discussing their tax return options.

83.2. do sections 269ZB(7), 269ZC(7) and 269ZD(6) (cross-referencing how the deductions allowance is determined) need to be included in full in each of these section? Could a simple signpost be included in each section instead, and perhaps a single "new" section apply across all three to deal with common areas? Even though sections 269ZB and 269ZC will eventually become redundant, and only section 269ZD will be applicable, this could take a number of years. Consolidating "common areas" would have the benefit of reducing (albeit in a limited way) the amount of new legislation these reforms require. A similar point can be made in relation to section 269ZB(6) and 269ZC(6).

84. Section 269ZB(8) and 269ZC(8) disapply the cap if a company has no qualifying (trading/non-trading) profits. In substance, these sections should only apply if a company has relevant pre-2017 amounts (or post-2017 streamed trading losses). Given that subsection (1) is stated to apply generally in determining taxable profits, could this be modified to make it clear (in the description of the

application of the section) that this can be ignored if there are no such amounts. Subsection (2) has this practical effect, but the drafting would suggest that (unless subsection (8) applies) you have to work out the cap even if you have no such deductions. Although guidance and compliance requirements can say "if you have no such amounts, ignore", it would be preferable for this to be stated in the legislation unequivocally.

Compliance

85. In addition, how do sections 269ZB(5) and 269ZC(5) fit within the compliance obligations?

86. As drafted, the group deductions allowance operates (as far as allocation is concerned) as an allowance against total profits. Only at the level of individual taxpayer companies does the split between trading, non-trading and "overall" allowance become relevant.

87. For a company to be able to access an allocated amount of the group deductions allowance, that amount has to be specified in the group allowance statement and the individual return (in effect, if not actual drafting, the legislation requires matching claims at group and solus level): this follows on from the rules relating to the group allowance statement and section 269ZM.

88. However, within the individual return, the drafting suggests that a company needs to specify any trading or non-trading apportionment in order to be able to take account of that specific amount in working out the relevant cap calculation (this seems the effect of sections 269ZB(5) and 269ZC(5)). So, although for the (full) deductions allowance, a company is under an obligation ("must") to include it in its tax return, including a trading/ non-trading deduction allowance are optional - save that it is not optional if the company wants to "claim" them. Can this be clarified in the legislation?

89. Also see comments on section 269ZM.

Section 269ZE

Guidance

90. We recommend that guidance includes one or more worked examples as to how the step process applies in practice (linking this to the steps set out in section 4(2) (given that Step 1 is an adapted total profits figure, rather than total profits as generally understood).)

91. For Step 2, the guidance should confirm that this means (in practice) current year reliefs available to offset total profits (i.e. excluding carry-back and carry forward, but including any current year group relief).

Simplification

92. Given that the UK tax system works on the basis of "source", and the deductions referenced in Step 1 are source-specific, is Step 1 needed: would it be simpler to require taxpayers to start off by calculating trading and non-trading profits, rather than adding everything up to then split it into component parts at Step 3? (Particularly given that Step 4 is source specific.)

93. If Step 1 remains, could the exclusion of Part 9A income form part of Step 1, so all adjustments to "normal" total profits for the purpose of this calculation are listed in the same place? (This would facilitate the cross-reference to section 269ZE(3) in section 269ZF(1).)

94. Step 5 is an outcome, not part of the methodology: should this be amended to follow the approach in section 4(2) CTA 2010?

Section 269ZG

Effect: signpost

95. The Explanatory Notes state that this section is about calculating the deductions allowance: could this be reflected in the statement of purpose in subsection (1) as a signpost?

Offshore developers

96. A group consists of all companies within the charge to corporation tax that meet the ownership conditions (as per section 269ZO). This can include companies not within a group relief group. Please confirm how offshore traders in land will be treated: currently, they cannot be a member of a group relief group, yet appear to be within the scope of the restrictions and taken into account for the purposes of the group deductions allowance. As we set out in our comments on the original Consultation, we consider such companies should be subject to the reforms and eligible to be a member of a group relief group.

Compliance

97. If a company wishes to take account of the group deductions allowance allocated to it in calculating the cap on loss carry forward, is it sufficient that the amount has been allocated to it in the group allowance statement - or does the amount have to be specified in the company's tax return as well (which is suggested by sections 269ZB(5), 269ZC(5)) and 269ZM)?

98. What happens if, at the time the company is required to file its own tax return, an applicable group allowance statement has not yet been filed (because the deadline has not yet passed - i.e. the company and a nominated company have different accounting dates[9])? Can it include estimated figures: or can it only file on the basis of what has actually been allocated to it under a submitted statement (having to amend its tax return as and when the statement is filed)?

Section 269ZH

Conditionality of GDA?

99. Subsection (2) sets out the amount of the group deductions allowance (GDA). As this section only applies if the conditions in subsection (1)(a) and (b) are met, this suggests that a group can only access and allocate a GDA if a group member has been nominated by all relevant UK group companies?

100. This appears to be confirmed by the Explanatory Notes which state that "Where the nomination is in effect throughout an accounting period of the nominated company, the group will have a total allowance of £5m in that accounting period". Is this correct: ie the ability of a group to access the £5m safe harbour is dependent on a compliance measure? Please clarify.

[9] Although section 390 Companies Act 2006 means that most group members should have the same accounting reference date, this is not a requirement where there are "good reasons" to do otherwise. Different accounting dates may follow on from a corporate acquisition for example, or other historic reasons.

101. If the ability to access a GDA, a substantive relief, is dependent on nomination, the position for groups differs from that for standalone companies (who are entitled to the GDA as of right) - although in both cases, being able to take account of the deductions allowance in the computations is subject to specifying the allowance in a tax return. Making the availability of a relief dependent on a procedural requirement (other than a claim) is not ideal from a policy perspective: however, given the lack of an obvious default position, and the need for a means of determining which group member(s) have access to (part) of the GDA for the rules to be workable, we appreciate that there may not be a viable alternative.

102. This approach means that it is important a nomination remains in place at all times: in this context, we welcome the approach in the draft legislation to allow (a) a continuing, rather than an accounting period by accounting period, nomination, (b) backdating of nominations and (c) for an overlap on a change in nominated company.

103. Regulations made under section 269ZH(8) must not impact the continued validity/existence of a nomination save in an exceptional case (given the effect on the availability of the GDA).

"First" accounting period

104. The first (actual or deemed) accounting period to which the rules apply will start on 1 April 2017 - a short period leading to a proportionate reduction to the allowance. Given that there is yet no information about the nomination process (draft regulations are not yet available), it seems very unlikely that even the most sophisticated corporate taxpayers will have made such a nomination by that date - particularly given the requirement in subsection (6).

105. Section 269ZH(5) allows a nomination to take effect retrospectively, which will allow groups to make an effective "late" nomination when the rules are known. This is helpful given the above. However, please confirm what restrictions (if any) will apply to this in terms of such backdating: it is important the rules give sufficient flexibility as this will be the only basis on which groups would seem to be able to access a group deductions allowance for that first period.

106. For example, given the deemed new accounting period starting 1 April 2017, it is possible that some companies will have a 1 month deemed accounting period (i.e. year end 30 April 2017). If a nomination has to be made in the same accounting period as that in which the GDA applies, this will be problematic. However if (at least for the first period that the rules apply to a group), the time limit is the filing date for the actual (not deemed) accounting period in question, this should be workable.

107. As the rules come into effect on 1 April 2017, and not for the first "real" accounting period to start after that date, the first period of operation of the rules will be "short" in most cases given section 269ZH(4), leading to a pro rata reduction in the GDA, as well as an apportionment of profits required by paragraph 49. This means the application of these measures will be potentially more complicated in the first period than might otherwise be the case - a result that seems unreasonable in itself (borrowing from paragraph 49's terminology). At the same time, corporate groups will be adjusting to the interest restriction rules (and related compliance and technical burdens). We therefore ask government to reconsider the commencement date for the loss reforms: ie moving to a "first actual accounting period" after 1 April 2017approach, as we requested in our response to the initial Consultation on loss reform.

Section 269ZH(6)

108. Subsection (6) requires all relevant UK companies to sign the nomination form (signing being by an "appropriate officer"). It is not uncommon for property groups to contain a large number of companies. This requirement will impose a significant burden (and administrative complexity) on groups - a proper officer may easily be faced with signing their name on behalf of over 200 companies just to meet this requirement.

109. We do appreciate that this is limited to companies at the time the nomination is made (and so in most cases this will be a "one-off" (as a nomination appears to be ongoing, unless and until subsection (7) is triggered). However, even as a one-off, the burden cannot be underestimated. Can an alternative approach be taken? For example, could the nomination be made just by the company that would be the "ultimate parent" of the UK (sub-)group and the nominated company for example?

Section 269ZH(7)

110. Subsection (b) appears to allow any one company within the group to end a nomination. We note that regulations are intended to deal with the process for revocation, and that this is ultimately a matter for groups to manage internally, but this does seem disproportionate - particularly given that absent a new nomination, it seems that the entitlement to any amount of GDA then disappears.

111. Following on from our comments in relation to subsection (6), could the ability to revoke a nomination be limited to say the UK ultimate parent (or another company specified for that purpose within the original nomination form).

112. We assume that a nomination ceases to have effect on the earlier of a listed event (if two or more events apply). So that if a nominated company is sold, it ceases to be the nominated company at the point of sale, regardless of whether the seller group has made other arrangements (which it seems it can do after the sale, and backdate the new nomination). This is helpful and welcome.

Section 269ZI

113. In most cases, a group's ability to choose the nominated company should minimise the need to make any changes.

114. In the event of a need to change a nominated company, we welcome the rules' reflection of reality, by allowing for transition mid-way through the compliance cycle.

115. However, we consider that guidance will need to set out how mechanically the transition works to facilitate taxpayers' understanding of how this works in practice.

116. In particular, subsection (2)(a) is mandatory - i.e. the nominated company must not submit the statement once its nomination has ceased. But where nominations overlap in reality, albeit not within the statute because of section 269(ZH(7)), because a nomination is backdated, then this rule does not apply. We assume that the submission referenced in subsection (3) is the one by the original nominated company? Should this be clarified in the drafting?

117. For example, a group has an accounting period ending 31 December. Company A is the nominated company with effect from 1 April 2017. Its first statement needs to be filed by 31 December 2018.

118. The group decides to nominate Company B instead. The nomination is made on 1 September (and at that point Company A's nomination is revoked by Company B under subsection (7)(b)) and it is stated to take effect on 1 January 2018.

119. Company A's nomination ends on 31 December 2017 (section 269ZH(7)(a)). It was nominated for the entire (deemed) 2017 accounting period. If it has not by 1 September filed a statement, it is no longer entitled to do so (section 269ZI(2)(a)) but if it has already filed a statement, then that statement is valid (section 269ZI(3)). However we assume that from then on only Company B can then revise that statement (section 269ZJ(2)), unless Company A made a revision prior to 1 September (section 269ZJ(3)).

120. Is this correct?

Section 269ZI(4)

Filing deadline

121. The filing deadline for the statement is the first anniversary of the filing date of the nominated company's accounting period. As the statement relates to, and impacts, claims within the group for carry forward loss relief, the deadline should be the later of that anniversary and the deadline that applies to loss relief (2 years from the end of the relevant accounting period). This would allow the group to have finalised its position on losses at the point of filing the statement.

Interaction with interest restriction filings

122. A group's profits and current year losses/NTDs will be impacted by the new interest restrictions. In our comments on the interest restriction legislation, we ask for the filing deadline for the interest restriction statement to be extended, both generally and also specifically in relation to the first period. If changes are made to the interest restriction rules, the time limit for the allowance statement needs to be reviewed as groups will need an appropriate period to settle their position under these two measures combined, given the impact of the interest restriction on both profits and current year losses/NTDs.

First accounting period: more time needed

123. We also consider that HMRC should, in any event, extend the filing date for the first period to which these rules apply given the impact of the straddle rules - or alternatively apply the rules to the first actual accounting period to start on or after 1 April 2017).

One accounting period/two nominated companies

124. In the event that within an accounting period, a company is subject to two nominated companies each of which has a different accounting date (which may happen if, for example, a group is taken over), presumably the accounting period of the "first" nominated company dictates the timing of the statement?

125. Could subsection (4) specify which company's tax return is relevant here please.

Section 269ZJ

126. See comments on section 269ZI generally and section 269ZI(4) in relation to time limits.

Section 269ZK

Listed companies

127. Please confirm that only those companies to which a (positive) amount of the GDA is allocated need to be listed: this seems implied by subsection (3)(f). Can this be made clearer in the legislation?

Compliance: keep it simple

128. Compliance requirements (as per regulations) must be straightforward and clear, and practical. In this context, we welcome the potential for regulations dealing with the matters listed in subsections (12)(c) and (d).

Revising the allowance statement: time limits

129. Subsection (7) applies where a statement includes incorrect information. This seems to be looking at ensuring the numbers in the statement add up. If the statement, when filed, includes an error, it seems unlikely that the nominated company would be aware of that mistake (where accidental) within the specified period of 30 days of original filing and so would not be able to submit a revised statement by the deadline. In practice therefore, we assume that many groups will rely on HMRC discretion to allow a longer period. This is not particularly satisfactory from a compliance standpoint: can instead the timing requirement link to the nominated company becoming aware of the non-compliance? If not, guidance should set out clearly when and how HMRC will exercise its discretion.

130. A similar point applies to subsection (8). Again, the time limit should link to the nominated company becoming aware of the non-compliance - or guidance should set out the types of situation where this may apply, and explain when and how HMRC will exercise its discretion.

131. However, if the purpose behind subsections (7) and (8) is simply to set a time limit after which HMRC can correct the statement, then could these provisions be amended accordingly both to reflect that - and make it clear that this is the only consequence of default? Guidance could then set out what is intended in practice: we would hope that the officer would notify the nominated company and give it the opportunity to correct its statement within a specified period - only if the company (once notified) failed to do so would HMRC exercise its discretion to amend the numbers.

HMRC amendments to an allowance statement

132. HMRC can amend a non-compliant statement as it "thinks fit". If the time limits for making a revision have passed, is the nominated company allowed to make further changes in response to the HMRC adjustment? It seems particularly harsh if a nominated company makes a mistake of which it is not aware, and then finds that HMRC has changed the allocations in a way that distorts the group's overall tax profile (noting that with the complexity of the provisions, and the potential number of group companies, a mistake could be easily made). Or could HMRC's discretion be prescribed: for example, the nominated company nominates in the statement one or more listed companies whose allocated amounts could be adjusted should the statement prove to be non-compliant as a result of error. This would also have the benefit of potentially limiting the number of individual company tax returns that then need to be amended.

Time limits

133. Subsection (11) suspends normal time limits for company tax returns where an annual statement is amended. What time limits (if any) apply? - this also links to the operation in practice of section 269ZN.

Section 269L

134. No comment.

Section 269ZM

Company tax return

135. Will the company tax return be updated to include boxes for the information on deduction allowance amounts which have to be specified in it?

Nil amounts

136. If no deductions allowance is allocated to a company, does it have to specify a nil amount: we raise this as section 269ZB(5) and 269ZC(6) specifically deem "nil" if no amount is specified.

Interaction with trading and non-trading deductions allowance

137. As this section imposes obligations relating to a company's tax return, it would help to cross-refer to the requirements to specify a trading or non-trading deductions allowance (if any).

Non-corresponding accounting periods

138. See also comments on section 269ZG where the company's accounting period is not coterminous with that of one or more nominated companies.

Section 269ZN

Time limit for amending

139. If a return has an excessive amount shown in it, this could be either because the company has made a mistake in transposing figures from the group annual statement or has made an error in allocating its total allowance between trading and non-trading portions. Alternatively it could be because an applicable group annual statement has been altered (as permitted by section 269ZJ). In any of these cases, is there a period in which the company "must" amend its return - particularly if the company is not immediately aware that the return is excessive. Plus, how does this interact with section 269ZK(10) and (11)?

Nature of obligation

140. What is meant by "so far as it may do so" in subsection (2)? Given that this subsection imposes an obligation on a company to make an amendment, then legislation should be clear as to the extent of any exception to that obligation. If this means that a company must only make an amendment if it is permitted, by law, to amend the return (i.e. is within any time limits to do so), it should say this clearly.

141. Similarly, what is meant by "unable to do so" in subsection (4)(b)? If this is directed at inability to amend because of the expiry of time limits only, can this please be specified?

Nature of amendment

142. In subsection (4), presumably the relevant alteration could be by the nominated company or HMRC. If by HMRC, the company should not be required to amend its return unless it has received a notice pursuant to section 269ZK(10).

Guidance

143. As a practical matter, can the guidance confirm what happens if a group company has a different accounting date to that of the nominated company? In such a case, the group company's loss usage will be impacted by two group allowance statements. At the time the group company submits its tax return, however, only one of those statements may have been filed. For example, a nominated company has an accounting period ending 31 December and the relevant company one of 30 September.

Section 269ZO

144. Guidance needs to provide practical examples of what "necessary modifications" are to be made when applying the listed provisions to specific entities, in order that taxpayers can have some certainty as to how this extended group definition applies in real-life situations.

Paragraphs 17 to 22

145. No comments

Part 3 – Group relief for carried-forward losses

Paragraph 23

Section 188D

146. For property losses, the effect of carry forward is to treat the loss as made in the current period.

147. Therefore a loss pre-2017 that is carried forward will be potentially "made" in more than one period: the period in which it actually arises and every period to which it is carried forward (in which it is accordingly treated as made). Should subsection (1)(c) be amended to clarify the application to losses originally made (and not treated as made) as has been done in (1)(a) and (b)? See in comparison section 104 CTA 2010.

Section 188F

148. This will need to be expanded on in guidance.

Section 188G

149. In subsection (3), is the reference to "surrender period" correct? We ask as this provision expands on subsection (2) which refers to the loss-making period.

Section 188I

150. Please confirm that this condition has to be met in the loss-making period only (which is the same as "the surrender period" for the purposes of section 109 in relation to current year group relief).

Section 188L

151. Subsection (8) incorporates by reference the meaning of "UK related" from the current year group relief rules. Is there a reason why the meaning of "group condition" was not also incorporated by reference, instead of setting out separately in section 188L(1) to (6)? Using the same definitions in Part 5 and Part 5A (by incorporating by reference) makes it clear that the same test applies.

Part 4 – Minor and consequential amendments

152. No comments

Part 5 – Commencement etc

Paragraph 49

153. See Key Comments (Complexity and Transition) and also see comments on paragraphs 11, 13, 29 and 79 above.

154. Assuming commencement remains on 1 April 2017, some groups may consider amending their accounting reference date to apply the rules to a "complete" period, particularly given the same commencement provisions apply to the interest restriction rules - adding to the compliance burden. If a group changes its accounting reference date to 31 March 2016, please confirm that this would not be challenged by HMRC.

155. Please include in the guidance examples of when a time apportionment would be seen as producing an unjust or unreasonable result.

B: General comments on "Reforms to corporation tax loss relief – responses to Consultation"

156. Draft legislation for the core rules of the loss relief reforms was published on 5 December 2016. The Responses Document highlighted in section C the subject-matter of the provisions to be published by the end of January 2017 (which were published on 26 January 2017). In advance of publication, the Responses Document summarised the government's intentions regarding such further legislation.

157. We will be commenting on the further legislation: however, given (a) the timescale for comments on the draft Finance Bill clauses and (b) the date of the Spring 2017 Budget, we set out below some general comments on certain areas covered in the Responses Document.

158. References below to section numbers are to sections of the Responses Document.

159. Section 2.6: We welcome the changes made to the policy proposals relating to in-year reliefs and post-2017 reliefs.

160. Section 2.10: We ask the government to reconsider legislating for some form of gateway (for the reasons set out in our response to the Consultation and also the comments in "*Guidance: sooner rather than later*" in Part I: Key Concerns above).

161. Section 4.5: We recognise the government's concerns in relation to "loss-buying" and appreciate the need to introduce targeted anti-avoidance measures. However we are concerned with the proposal to extend the time-limit for applying relevant change of ownership provisions to 5 years (instead of 3, as currently provided). This is a significant change to existing policy as reflected in rules which have been the subject of frequent revision in recent years – representing an almost doubling in the "at risk" period. No policy justification has been given for this change. ***In our view, both existing and new change of ownership/loss buying provisions should maintain the current 3 year period***. Avoidance rules must be proportionate to the risk.

162. If – and only if – the government identifies abuse of the new flexibility through loss-buying not caught by the existing provisions (i.e. after monitoring the impact of the new regime for a reasonable period), should the 3 years be extended. In that context, the "threat" of a potential extension could be used to try to influence behaviour: rather than extend now and risk denying relief in non-avoidance situations.

163. Section 4.6 – 4.8: We welcome the government's decision not to include an "expiry" provision for losses. However, in relation to the provisions summarised in these sections, guidance will need to be clear as to when these provisions could apply. In addition, as per our comments on the new section 45D, the provisions should also provide for what happens should activities revive.

164. Section 5.25: We very much welcome the decision to exclude REITs from the loss reforms.

165. Sections 5.32 – 5.35: We welcome the approach to be taken in relation to consortium relief. As we set out in our response to the Consultation, we consider this to be the only workable solution in practice.

166. In relation to consortia generally, we ask that the government consider expanding the definition of consortium company to include companies with a property business, as well as trading companies (the Responses Document makes no reference to any other changes to the consortium relief provisions).

BPF Response to UK Government Consultation on Reforms to corporation tax loss relief

Appendix: Loss carry forward (before and after loss reform)

Type of loss	Pre- 2017 Carry Forward	Post-2017 Carry Forward	Cap
Trading losses	Automatic (to extent no claim to offset against total profits same/earlier AP or CY GR)	Pre-2017 Trading losses CF s45: disclaim	Relevant trading profits cap s269B
		[Post -2017 Trading losses (restricted) CF s45B: disclaim]	
		Post-2017 Trading losses (unrestricted) CF s45A: claim	Relevant total profits cap s269ZD
Non-trading deficit	Automatic(to extent no claim to offset against total profits same/earlier AP or CY GR) with claim possible to "skip" an AP	Pre-2017 Non-trading deficit: automatic but can claim to "skip" an AP s457/458	Relevant non-trading profits cap s269ZC
		Post-2017 Non-trading deficit: claim s463G	Relevant total profits cap s269ZD
Management expenses	Automatic (rolled over and treated as current year save for group relief)	Pre-2017 CF Management expenses: claim s1223(3B)	Relevant total profits cap s269ZD
		Post 2017 CF management expenses (rel to CF GR only): claim s1223(3B)	Relevant total profits cap s269ZD
UK property business losses	Automatic (rolled over and treated as current year save for group relief)	Pre-2017 CF UK property business losses: claim s62(5A)	Relevant total profits cap s269ZD
		Post-2017 CF UK property business losses (rel to CF GR only): claim s62(5A)	Relevant total profits cap s269ZD
	If property business ceased, CF as management expenses: automatic	Conversion to management expenses: claim s63(4)	Relevant total profits cap s269ZD
Group relief	Not available on CF basis	CF available for post-2017 losses/man expenses. Company can only surrender if losses > capped amount.	Relevant total profits cap s269ZD