

EXPLANATORY NOTE

CLAUSE [A] SCHEDULE [X]: FOREIGN DENOMINATED LOSSES

SUMMARY

1. This Clause and Schedule ensures that where a company computes its profits or losses for corporation tax purposes in a currency other than sterling any losses carried forward to future accounting periods or back to a previous accounting period will be translated into sterling at the same exchange rate as the profits they are offsetting. There are special rules to deal with the situation where the losses in one period are computed for corporation tax purposes in one currency but are being offset against profits for an earlier or later period computed in a different currency.

DETAILS OF THE SCHEDULE

2. Paragraph 1 sets out that the amendments in this Schedule are to be made to Finance Act 1993 (FA 1993).
3. Paragraph 2 amends section 92(2) FA 1993 to reflect amendments to section 92D FA 1993 and the insertion of sections 92DA and 92DB FA 1993.
4. Paragraph 3 inserts new sub-section (4) to section 92B FA 1993. This sub-section ensures that where any amounts are required to be translated into another currency they are translated at the “appropriate exchange rate”. The “appropriate exchange rate” is defined at new section 92E(4) FA 1993 (see paragraph 38).
5. Paragraph 4 inserts new sub-section (5) to section 92C FA 1993. This sub-section ensures that where any amounts are required to be translated into another currency they are translated at the “appropriate exchange rate”. The “appropriate exchange rate” is defined at section 92E(4) FA 1993 (see paragraph 38).
6. Paragraph 5 substitutes, in place of the existing section 92D FA 1993, a new section 92D FA 1993 and also introduces new sections 92DA, 92DB and 92DC to FA 1993 that deal with the translation of “carried back amounts” and “carried forward amounts”.
7. Section 92D provides the “basic rule” for translating amounts into sterling.

8. Subsection (1) sets out that section 92D will apply where any profit or loss is required by section 92B or 92C FA 1993 to be translated into its sterling equivalent.
9. Subsection (2) sets out that any translation within section 92D(1) should be made by reference to the “appropriate exchange rate”. The “appropriate exchange rate” is defined at section 92E(4) FA 1993 (see paragraph 38).
10. Subsection (3) provides that the basic rule for translating to sterling equivalents set out in subsections (1) and (2) is subject to the special rules at sections 92DA and 92DB FA 1993.
11. Section 92DA FA 1993 sets out the rules to determine the sterling equivalent of “carried back amounts”. Such amounts are defined in new section 92DC(1) FA 1993.
12. Subsection (1) sets out when section 92DA applies. This is where a company carries back any amount and with regard to that amount the loss is required to be translated into sterling by section 92B or 92C FA 1993.
13. Subsection (2) sets out that a translation required by this section must be made in accordance with one of three rules, whichever is applicable, set out in the following subsections.
14. Subsection (3) sets out when Rule 1 is applicable and will be the most common situation. This is where the operating currency of the company in the accounting period in which the carried back loss originated and the operating currency of the company in the earlier accounting period in which that loss is utilised are the same.
15. Subsection (4) states that Rule 1 is that the exchange rate used in translating into sterling any carried back amounts utilised in an earlier accounting period must be the same as the exchange rate used in computing the profits of that earlier accounting period.
16. Subsection (5) sets out when Rule 2 is applicable. This deals with changes in operating currency and applies where losses originating in an accounting period when sterling is not the operating currency are carried back into a period when sterling is the operating currency.
17. Subsection (6) states that Rule 2 is that the rate of exchange for translating the carried back loss must be the spot rate on the last day of the accounting period to which the loss has been carried back. This will convert non-sterling losses carried back into sterling at the end of the last accounting period where sterling was the operating

currency even though the loss may not, necessarily, be utilised in that period. Consequently, the value of those losses, in sterling, will remain the same throughout all periods where sterling is the operating currency.

18. Subsection (7) sets out when Rule 3 is applicable. This deals with changes in operating currency and applies where losses originate in an accounting period in one currency and are carried back into an accounting period where profits and losses are computed in a different non-sterling operating currency.
19. Subsection (8) states that Rule 3 requires two stages. Firstly, any loss carried back into an earlier accounting period is translated into the operating currency of the earlier accounting period at the spot rate on the last day of that earlier accounting period. This will convert the carried back losses into the previous operating currency at the end of the last accounting period where there was a different operating currency even though the loss may not necessarily be utilised in that period. Consequently, the value of those losses, in the previous operating currency, will remain the same throughout all periods where that previous operating currency is the operating currency. Secondly, the carried back amount that has been translated into the operating currency of the earlier accounting period is then translated into sterling at the same rate of exchange as the profits of the earlier accounting period in which the loss is utilised.
20. Section 92DB FA 1993 deals with the situation where amounts calculated in a non-sterling currency are carried forward and utilised against profits in a later accounting period. It also deals with the situation where losses have been calculated in sterling but are carried forward and utilised against profits in a later accounting period that are calculated in a currency other than sterling.
21. Subsection (1) sets out when section 92DB applies. This is where a company carries forward any amount and with regard to that amount a loss is required to be translated into sterling by section 92B or 92C FA 1993.
22. Subsection (2) sets out that a translation required by this section must be made in accordance with one of three rules set out in the following subsections, depending on whichever is applicable.
23. Subsection (3) sets out when Rule 1 is applicable and will be the most common situation. This is where the operating currency of the company in the accounting period in which the carried forward loss

originated and the operating currency of the company in the later accounting period in which that loss is utilised are the same.

24. Subsection (4) states that Rule 1 is that the exchange rate used in translating into sterling any carried forward amounts utilised in a later accounting period must be the same as the exchange rate used in computing the profits and losses of that later accounting period.
25. Subsection (5) sets out when Rule 2 is applicable. This deals with changes in operating currency and applies where losses originating in an accounting period when sterling is not the operating currency are carried forward into a period when sterling is the operating currency.
26. Subsection (6) states that Rule 2 is that the rate of exchange for translating the carried forward loss must be the spot rate on the first day of the accounting period in which the loss has been carried forward into. This will convert non-sterling losses carried forward into sterling at the beginning of the first accounting period where sterling is the operating currency even though the loss may not necessarily be utilised in that period. Consequently, the value of those losses, in sterling, will remain the same throughout all periods where sterling is the operating currency.
27. Subsection (7) sets out when Rule 3 is applicable. This deals with changes in operating currency and applies where losses originate in an accounting period in one currency and are carried forward into an accounting period where profits and losses are computed in a different non-sterling operating currency.
28. Subsection (8) states that Rule 3 requires two stages. Firstly, any loss carried forward into a later accounting period is translated into the operating currency of the later accounting period at the spot rate on the first day of that later accounting period. This will convert the carried forward losses into the future operating currency at the start of the first accounting period where there is a different operating currency even though the loss may not necessarily be utilised in that period. Consequently, the value of those losses, in the future operating currency, will remain the same throughout all periods where that future operating currency is the operating currency. Secondly, the carried forward amount that has been translated into the operating currency of the later accounting period is then translated into sterling at the same rate of exchange as the profits of the later accounting period in which the loss is utilised.
29. Section 92DC FA 1993 sets out the meaning of “carried back amount” and “carried forward amount.”

30. Subsection (1) contains a list of items that constitute a “carried back amount”.
31. Subsection (2) contains a list of items that constitute a “carried forward amount”.
32. Subsection (3) clarifies that the references in section 92DB FA 1993 to the profit against which carried-forward losses are to be offset would be the amount of profit ignoring the deduction of carried forward losses against that profit.
33. Subsection (4) clarifies that subsection 3 applies equally to amounts that are offset as though they are a loss of the later period. This would apply to, for example, expenses of management carried forward and offset in a later period as though they are a loss in the period in which they are utilised under section 1223 of the Corporation Tax Act 2009.
34. Paragraph 6(1) sets out that section 92E FA 1993 is amended.
35. Paragraph 6(2) amends the heading of section 92E FA 1993.
36. Paragraph 6(3) is a consequential amendment.
37. Paragraph 6(4) inserts subsections (4) and (5) into section 92E.
38. Subsection (4) contains a new definition of “the appropriate exchange rate” for the purposes of section 92B to 92D FA 1993. This replaces the definition previously at section 92D(2) FA 1993 and like the previous definition allows for either the average for the accounting period or the spot rate on the day of the transaction(s). The new definition removes any uncertainty that spot rates may be used, on a just and reasonable basis, where there is more than one transaction in the accounting period. It also states that where there is only one transaction, an appropriate spot rate must be used and so in that circumstance there is no choice between using an average rate or a spot rate.
39. Subsection (5) inserts a definition of “operating currency” for the purposes of section 92DA and 92DB FA 1993.
40. Paragraph 7 provides for the commencement date for the amendments made by this Schedule. The changes apply to accounting periods beginning on or after the commencement date (29 December 2008: see paragraph 58).

41. Paragraph 8 provides transitional rules where non-sterling losses are carried back and utilised in accounting periods prior to the commencement of this Schedule.
42. Paragraph 8(1) sets out that Paragraph 8 applies where a certain condition is met.
43. Paragraph 8(2) sets out the condition mentioned in Paragraph 8(1). The condition being that there are non-sterling losses arising in an accounting period to which this Schedule applies that are utilised in an accounting period prior to the commencement of this Schedule.
44. Paragraph 8(3) states where the condition in Paragraph 8(2) is met then the normal rules relating to non-sterling losses that are carried back and utilised in earlier accounting periods at section 92DA FA 1993 will not operate.
45. Paragraph 8(4) sets out, where the condition in Paragraph 8(2) is met, carried-back losses originating in non-sterling currencies must be translated into sterling at the “appropriate exchange rate” for the accounting period in which the loss arises. The “appropriate exchange rate” is defined at section 92E(4) FA 1993 (see paragraph 38).
46. Paragraph 9 provides transitional rules where non-sterling losses originate in an accounting period prior to the commencement of this Schedule but are utilised in an accounting period to which this Schedule applies.
47. Paragraph 9(1) sets out that Paragraph 9 applies where a certain condition is met.
48. Paragraph 9(2) sets out the condition mentioned in Paragraph 9(1). The condition being that there are non-sterling losses arising in an accounting period prior to the commencement of this Schedule that are utilised in an accounting period to which this Schedule applies.
49. Paragraph 9(3) sets out, where the condition in Paragraph 9(2) is met, the three steps that must be followed in order to translate carried-forward losses originating in non-sterling currencies into sterling. Step 1 is to translate the loss into sterling at the “appropriate exchange rate” for the accounting period in which the loss arises (the “appropriate exchange rate” is defined at section 92E(4) FA 1993 - see paragraph 38). Step 2 is to translate the loss from Step 1 (now in sterling) into the original currency at the spot rate of exchange on the first day of the first accounting period to which this Schedule applies.

Step 3 is to translate the loss resulting from Step 2 into sterling as per Rules 1, 2 or 3 set out in paragraph 9(4).

50. Paragraph 9(4) sets out when Rule 1 is applicable. This is where the operating currency of the company in the accounting period in which the carried forward loss originated and the operating currency of the company in the later accounting period in which that loss is utilised are the same.
51. Rule 1 in Paragraph 9(5) is that the exchange rate used in translating any carried forward amounts utilised in a later accounting period must be the same as the exchange rate used in computing the profits of that later accounting period.
52. Paragraph 9(6) sets out when Rule 2 is applicable. This deals with changes in operating currency and applies where losses originating in an accounting period when sterling is not the operating currency are carried forward into a period when sterling is the operating currency.
53. Rule 2 in Paragraph 9(7) is that the rate of exchange for translating the carried forward loss must be the spot rate on the first day of the accounting period in which the loss has been carried forward into. This will convert non-sterling losses carried forward into sterling at the beginning of the first accounting period where sterling is the operating currency even though the loss may not necessarily be utilised in that period. Consequently, the value of those losses, in sterling, will remain the same throughout all periods where sterling is the operating currency.
54. Paragraph 9(8) sets out when Rule 3 is applicable. This deals with changes in operating currency and applies where losses originate in an accounting period in one currency and are carried forward into an accounting period where profits and losses are computed in a different non-sterling operating currency.
55. Rule 3 in Paragraph 9(9) requires two stages. Firstly, any loss carried forward into a later accounting period is translated into the operating currency of the later accounting period at the spot rate on the first day of that later accounting period. This will convert the carried forward losses into the future operating currency at the start of the first accounting period where there is a different operating currency even though the loss may not necessarily be utilised in that period. Consequently, the value of those losses, in the future operating currency, will remain the same throughout all periods where that future operating currency is the operating currency. Secondly, the carried forward amount that has been translated into the operating

currency of the later accounting period is then translated into sterling at the same rate of exchange as the profits of the later accounting period in which the loss is utilised.

56. Paragraph 10(1) sets out that in this Schedule the expressions “appropriate exchange rate”, “carried-back amount”, “carried-forward amount” and “operating currency” have the meaning provided by section 92DC or 92E FA 1993.
57. Paragraph 10(2) makes clear that the provisions in subsections (3) and (4) of section 92DC FA 1993 (that deal with references to the profit against which a carried-forward amount is to be set off) apply in relation to this whole Schedule in the same manner as they apply in relation to section 92DB FA 1993.
58. Paragraph 10(3) states that “the commencement date” for the purposes of this Schedule means 29 December 2007. This is to ensure that the changes can begin to apply to all relevant companies who have an accounting period that effectively spans 2008; those companies with 52-week accounting periods beginning after their previous accounting period ended on the last Friday of 2007 as well as those companies that have calendar accounting periods beginning on 01 January 2008.
59. Paragraph 11(1) provides that a company can elect to ensure that Paragraph 9 (the transitional rules that translate amounts carried forward from earlier periods) does not apply and defers “the commencement date” from 29 December 2007 to the day on which this Act is passed. The election will therefore enable a company to ensure that all brought forward losses at the beginning of the first accounting period beginning on or after Royal Assent are not translated from sterling back into the currency in which the loss originated. This will prevent any companies from being disadvantaged by this Schedule.
60. Paragraph 11(2) sets out the time limit within which any election under Paragraph 10 should be made and ensures that any such election is irrevocable. The normal rules relating to elections at Schedule 1A TMA 1970 will apply.

BACKGROUND NOTE

61. Where a company computes its profits or losses for corporation tax purposes in a currency other than sterling current tax rules require that company to carry forward or back any unused losses in sterling. This rule leads to exchange exposure for both companies and the

Exchequer. This exposure has become a significant issue recently for a number of companies whose profits are computed for tax purposes in a currency other than sterling due to exchange rate volatility. This means that the measure of losses translated into sterling when incurred will offset a different measure of profits translated into sterling arising in a previous or subsequent accounting period.

62. In response to this, a written statement presented to Parliament by the Financial Secretary to the Treasury dated 18 December 2008 announced the Government's intention to allow companies to carry forward and back unused losses in the currency in which they were computed.
63. The purpose of this Schedule is therefore to ensure that losses computed in a currency other than sterling offset the same measure of profits computed in that currency for the earlier or later period.
64. In order to bridge the change in treatment of foreign denominated losses, transitional rules will apply where a company has unused losses brought forward at the start of the first accounting period after the commencement of this clause and those losses were computed in a currency other than sterling. In these cases the brought forward losses will be converted back into the currency in which they originated, although an election is available to allow companies to only apply the changes outlined above to losses incurred in accounting periods beginning on or after Royal Assent.