

EXPLANATORY NOTE

NEW CLAUSE [1]: TRANSFERS OF TRADE TO OBTAIN TERMINAL LOSS RELIEF

SUMMARY

1. New Clause [1] addresses scenarios where trade cessation artificially occurs as a result of the trade being transferred to a person or persons outside the scope of Corporation Tax and it can be established that this is part of a scheme or arrangement, the main purpose or one of the main purposes of which is to access ‘terminal loss relief’.
2. In such circumstances ‘terminal loss relief’ will not be available to the transferring entity and neither will carried forward losses relating to the trade be transferred to the receiving entity for set off against future profits.

DETAILS OF THE CLAUSE

3. Paragraph 1 introduces subsection 2E into section 393A ICTA 1988 and provides that subsection 2A of section 393A ICTA 1988 does not apply where two criteria are satisfied. Those criteria being:
 - a trade ceases by virtue of its transfer to a person or persons outside the scope of Corporation tax; and
 - the transfer is part of a scheme or arrangement the main purpose or one of the main purposes of which is to gain access to ‘terminal loss relief’.
4. Paragraph 2 provides that the amendment made by paragraph 1 has effect in relation to cessations of trade on or after 21 May 2009.

BACKGROUND NOTE

5. New Clause [1] acts to counter a specific avoidance scheme (and variants of it) disclosed to HMRC that exploits Corporation Tax rules providing that losses arising in a trade in the 12 months prior to its cessation, may be carried back for set off against profits made in the previous 3 years (‘Terminal Loss Relief’).