NOTICES OF AMENDMENTS

given on

Wednesday 26 June 2013

For other Amendment(s) see the following page(s) of Supplement to Votes:
387-88 *and* 389

CONSIDERATION OF BILL

FINANCE BILL, AS AMENDED

Transfer of deductions

Mr Chancellor of the Exchequer

NC4

To move the following Clause:—

‘Schedule [*Transfer of deductions*]—

(a) inserts into CTA 2010 a new Part 14A (transfer of deductions), and

(b) makes consequential provision.’.

Restrictions on buying capital allowances

Mr Chancellor of the Exchequer

NC5

To move the following Clause:—

‘ Schedule [*Restrictions on buying capital allowances*] contains provision amending Chapter 16A of Part 2 of CAA 2001 (restrictions on allowance buying).’

Mr Chancellor of the Exchequer

NS1

To move the following Schedule:—

‘TRANSFER OF DEDUCTIONS

New Part 14A of CTA 2010

1 After Part 14 of CTA 2010 insert—

“Part 14A

TRANSFER OF DEDUCTIONS

730A Overview

(1) This Part makes provision restricting the circumstances in which deductible amounts may be brought into account where there has been a qualifying change in relation to a company.

(2) For the meaning of “deductible amount” and “qualifying change” see section 730B.

730B Interpretation of Part

(1) In this Part—

“arrangements” includes any agreement, understanding, scheme, transaction or series of transactions (whether or not legally enforceable),

“C” means the company mentioned in section 730A(1),

“deductible amount” means—

(a) an expense of a trade,

(b) an expense of a UK property business or an overseas property business,

(c) an expense of management of a company’s investment business within the meaning of section 1219 of CTA 2009,

(d) a non-trading debit within the meaning of Parts 5 and 6 of CTA 2009 (loan relationships and derivative contracts) (see section 301(2) of that Act), or

(e) a non-trading debit within the meaning of Part 8 of CTA 2009 (intangible fixed assets) (see section 746 of that Act),

but does not include any amount that has been taken into account in determining RTWDV within the meaning of Chapter 16A of Part 2 of CAA 2001 (restrictions on allowance buying) (see section 212K of that Act),

“qualifying change”, in relation to a company, has the same meaning as in that Chapter, and

“the relevant day” means the day on which the qualifying change in relation to C occurred.

(2) In this Part, references to bringing an amount into account “as a deduction” in any period are to bringing it into account as a deduction in that period—

(a) in calculating profits, losses or other amounts for corporation tax purposes, or

(b) from profits or other amounts chargeable to corporation tax.

730C Disallowance of deductible amounts: relevant claims

(1) This section applies where a relevant claim is made for an accounting period ending on or after the relevant day.

(2) "Relevant claim" means a claim by C, or a company connected with C, under—

(a) section 37 (relief for trade losses against total profits), or

(b) Chapter 4 of Part 5 (group relief).

(3) A deductible amount that meets conditions A and B may not be the subject of, or brought into account as a deduction in, the claim.

(4) But subsection (3) does not exclude any amount which could have been the subject of, or brought into account as a deduction in, the claim in the absence of the qualifying change.

(5) Condition A is that, on the relevant day, it is highly likely that the amount, or any part of it, would (disregarding this Part) be the subject of, or brought into account as a deduction in, a relevant claim for an accounting period ending on or after the relevant day.

(6) Any question as to what is "highly likely" on the relevant day for the purposes of subsection (5) is to be determined having regard to—

(a) any arrangements made on or before that day, and

(b) any events that take place on or before that day.

(7) Condition B is that the main purpose, or one of the main purposes, of change arrangements is for the amount (whether or not together with other deductible amounts) to be the subject of, or brought into account as a deduction in, a relevant claim for an accounting period ending on or after the relevant day.

(8) "Change arrangements" means any arrangements made to bring about, or otherwise connected with, the qualifying change.

(9) This section does not apply to a deductible amount if, and to the extent that—

(a) section 730D(2) applies to it, or

(b) for the purposes of section 432, a loss, or any part of a loss, to which section 433(2) applies derives from it.

730D Disallowance of deductible amounts: profit transfers

(1) This section applies where arrangements ("the profit transfer arrangements") are made which result in—

(a) an increase in the total profits of C, or of a company connected with C, or

(b) a reduction of any loss or other amount for which relief from corporation tax could (disregarding this section) have been given to C or a company connected with C,

in any accounting period ending on or after the relevant day.

(2) A deductible amount that meets conditions D and E may not be brought into account by C, nor any company connected with C, as a deduction in any accounting period ending on or after the relevant day.

(3) Condition D is that, on the relevant day, it is highly likely that the amount, or any part of it, would (disregarding this Part) be brought into account by C, or any company connected with C, as a deduction in any accounting period ending on or after the relevant day.

(4) Any question as to what is "highly likely" on the relevant day for the purposes of subsection (3) is to be determined having regard to—

(a) any arrangements made on or before that day, and

(b) any events that take place on or before that day.

(5) Condition E is that the main purpose, or one of the main purposes, of the profit transfer arrangements is to bring the amount (whether or not together with other deductible amounts) into account as a deduction in any accounting period ending on or after the relevant day.

(6) Subsection (7) applies if—

(a) (disregarding subsection (7)) subsection (2) would prevent a deductible amount being brought into account by a company as a deduction in any accounting period ending on or after the relevant day, and

(b) in the absence of the profit transfer arrangements and disregarding any deductible amounts, the company would have an amount of total profits for that accounting period.

(7) Subsection (2) applies only in relation to such proportion of the deductible amount mentioned in subsection (6)(a) as is just and reasonable."

Consequential amendments

2(1) In section 1(4) of CTA 2010 (overview of Act), after paragraph (a) insert—

"(aa) transfer of deductions (see Part 14A),".

(2) In section 432 of that Act (sale of lessors: restriction on relief for certain expenses), after subsection (1) insert—

"(1A) For the purposes of subsection (1), an expense is to be disregarded if, and to the extent that, section 730D(2) (disallowance of deductible amounts: profit transfers) applies to it."

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

"arrangements (in Part 14A)	section 730B"
"as a deduction (in Part 14A)	section 730B"
"C (in Part 14A)	section 730B
"deductible amount (in Part 14A)	section 730B"

"qualifying change (in Part 14A)	section 730B"
"the relevant day (in Part 14A)	section 730B".

Commencement and transitional provision

3(1) The amendments made by this Schedule have effect in relation to a qualifying change if the relevant day is on or after 20 March 2013.

(2) But those amendments do not have effect if before that date—

(a) the arrangements made to bring about the qualifying change were entered into, or

(b) there was an agreement, or common understanding, between the parties to those arrangements as to the principal terms on which the qualifying change would be brought about.

(3) If—

(a) the relevant day in relation to a qualifying change is before 26 June 2013, or

(b) paragraph (a) or (b) of sub-paragraph (2) was satisfied before that date,

those amendments have effect in relation to the qualifying change as if section 730C(9)(b) were omitted.'.

Mr Chancellor of the Exchequer

NS2

To move the following Schedule:—

'RESTRICTIONS ON BUYING CAPITAL ALLOWANCES

Introductory

1 Chapter 16A of Part 2 of CAA 2001 (avoidance involving allowance buying) is amended as follows.

Restrictions where certain conditions met

2(1) Section 212B (circumstances where Chapter 16A applies) is amended as follows.

(2) For subsection (1)(d) substitute—

"(d) the qualifying change meets one of the limiting conditions."

(3) For subsection (4) substitute—

"(4) Sections 212LA and 212M set out the limiting conditions and specify when those conditions are met."

3 After section 212L insert—

"Limiting conditions

212LA Limiting conditions

(1) The qualifying change meets one of the limiting conditions if condition A, B, C or D is met.

(2) Condition A is that the amount of the relevant excess of allowances is £50 million or more.

(3) Condition B is that the amount of the relevant excess of allowances—

(a) is £2 million or more but less than £50 million, and

(b) is not insignificant as a proportion of the total amount or value of the benefits derived by any relevant person by virtue of the qualifying change or change arrangements.

(4) "Relevant person" means a person who, at the end of the relevant day, is—

(a) a principal company of C,

(b) a person carrying on the relevant activity in partnership, or

(c) a person who is connected to a person within paragraph (a) or (b) (within the meaning of section 1122 of CTA 2010).

(5) Condition C is that—

(a) the amount of the relevant excess of allowances is less than £2 million, and

(b) the qualifying change has an unallowable purpose.

See section 212M for the meaning of "unallowable purpose".

(6) Condition D is that the main purpose, or one of the main purposes, of any arrangements is to procure that condition A or B or paragraph (a) of condition C is not met.

(7) In this section—

the amount of the relevant excess of allowances is the difference between RTWDV and BSV (see sections 212K and 212L);

"change arrangements" and "arrangements" have the same meaning as in section 212M."

4 In consequence of the amendments made by paragraphs 2 and 3, the heading to Chapter 16A becomes "RESTRICTIONS ON ALLOWANCE BUYING".

Extension of restrictions to other qualifying activities

5(1) Section 212B (circumstances where Chapter 16A applies) is amended as follows.

(2) In subsection (1)—

(a) in paragraph (a), for "a trade ("the relevant trade")" substitute "a qualifying activity ("the relevant activity")", and

(b) in paragraph (c), for "trade" (in both places) substitute "activity".

(3) In subsection (3) for "trade" substitute "activity".

6(1) Section 212C (when there is a a qualifying change in relation to C) is amended as follows.

(2) In subsection (4)—

(a) after "Condition C is that" insert "the relevant activity is a trade (within the meaning of this Part) and", and

(b) for "trade", where it appears after "the relevant" (in both places), substitute "activity".

(3) In subsection (5) for "trade" (in both places) substitute "activity".

7(1) Section 212I (relevant percentage share) is amended as follows.

(2) In subsections (1) and (3) for "trade" substitute "activity".

(3) In subsection (2) for “a trade” substitute “an activity”.

8 In section 212J(1) (relevant excess of allowances) for “trade” substitute “activity”.

9 In section 212K(2), (3), (4) and (5) (relevant tax written-down value) for “trade” substitute “activity”.

10 In section 212N(2), (3) and (4) (old and new accounting periods) for “trade” substitute “activity”.

11(1) Section 212P (effect of excess on pools) is amended as follows.

(2) In subsection (3)—

(a) for “a trade (or part of a trade)” substitute “a qualifying activity (or part of a qualifying activity)”,

(b) for “the activities of that trade (or part of a trade)” substitute “that activity (or that part of an activity)”,

(c) after “its trade” insert “or business”,

(d) for “those activities” substitute “that activity (or that part)”, and

(e) after “separate trade” insert “or business”.

(3) In subsection (4)—

(a) after “section 37” insert “, 62 or 66”,

(b) omit “trade”,

(c) for “earlier” substitute “other”, and

(d) after “period)” insert “or section 259 or 260(3) of this Act (special leasing)”.

12(1) Section 212Q (when there are postponed capital allowances) is amended as follows.

(2) In subsection (3)—

(a) for “a trade (or part of a trade)” substitute “a qualifying activity (or part of a qualifying activity)”,

(b) for “the activities of that trade (or part of a trade)” substitute “that activity (or that part of an activity)”,

(c) after “its trade” insert “or business”,

(d) for “those activities” substitute “that activity (or that part)”, and

(e) after “separate trade” insert “or business”.

(3) In subsection (4)—

(a) after “section 37” insert “, 62 or 66”, and

(b) after “CTA 2010” insert “or section 259 or 260(3) of this Act”.

Commencement

13(1) The amendments made by this Schedule have effect in relation to a qualifying change if the relevant day (within the meaning of Chapter 16A of Part 2 of CAA 2001) is on or after 20 March 2013.

(2) But those amendments do not have effect if before that date—

(a) the arrangements made to bring about the qualifying change were entered into, or

(b) there was an agreement, or common understanding, between the parties to those arrangements as to the principal terms on which the qualifying change would be brought about.’.

EXPLANATORY NOTE

NEW CLAUSE 4: NEW SCHEDULE 1

CORPORATION TAX: TARGETED LOSS BUYING RULES

SUMMARY

1. This clause introduces a new Part 14A in Corporation Tax Act 2010 (CTA 2010) which includes two new substantive restrictions on the circumstances in which deductible amounts may be brought into account where there has been a qualifying in relation to a company (C). The deductible amounts are ones which, at the date of the qualifying change (the "relevant day"), can be regarded as highly likely to arise as deductions for an accounting period ending on or after that day. The first restriction is on claims for group relief and relief for trade losses against total profits for deductible amounts in accounting periods ending on or after the relevant day where the purpose, or one of the main purposes, of arrangements connected to the qualifying change is for the deductible amounts to be the subject of, or brought into account as a deduction in, such a claim.The second restriction is in respect of deductible amounts where there are 'profit transfer arrangements' (i.e. arrangements which result in an increase in the total profits of C, or a company connected to C) where the purpose, or one of the main purposes, of those arrangements is to bring the deductible amount into account as a deduction in any accounting period ending on or after the relevant day.

DETAILS OF THE SCHEDULE

2. Schedule 1 amends CTA 2010 by introducing a new Part 14A with the heading "Transfer of Deductions."

3. New Section 730A provides an overview of the Part.

4. New Section 730B explains the meaning of "deductible amount" and "qualifying change". A "deductible amount" is any expense of a trade or property business, an expense of management of an investment business, non-trading debits within the meaning of Parts 5 and 6 of the Corporation Tax Act 2009 (CTA 2009) (loan relationships, derivative contracts) or a non-trading debit within the meaning of Part 8 CTA 2009 (intangible fixed assets). "Deductible amount" does not include any amount that has been taken into account in determining RTWDV within the meaning of Chapter 16A of Part 2 of Capital Allowances Act 2001 (CAA 2001). A "qualifying change" has the same meaning in Part 14A as in Chapter 16A of Part 2 CAA 2001. Subsection (2) explains the references to bringing an amount into account "as a deduction".

5. New Section 730C provides for the restriction which applies to disallow deductible amounts for relevant claims.

6. Subsection 1 applies the section where a relevant claim is made for an accounting period on or after the qualifying change.

7. Subsection 2 defines a relevant claim as a claim for relief for trade losses against total profits (under section 37 of CTA 2010) or group relief (under Chapter 4 of Part 5 of CTA 2010) by C or a company connected with C.

8. Subsection 3 provides that if two conditions (A and B) are met the deductible amount may not be the subject of, or brought into account as a deduction in, a relevant claim.

9. Subsection 4 applies to allow any amount that could have been claimed or brought into account as a deduction in the claim if there had not been a qualifying change.

10. Subsection 5 explains condition A: on the relevant day it is highly likely that the deductible amount would be the subject of, or brought into account as a deduction in a relevant claim for an accounting period ending on or after the relevant day.

11. Subsection 6 explains that what is "highly likely" is determined having regard to any arrangements or events that take place on or before the qualifying change.

12. Subsection 7 explains condition B: where the purpose, or one of the main purposes, of any "change arrangements" is for the deductible amount to be the subject of, or brought into account as a deduction in a relevant claim.

13. Subsection 8 defines change arrangements as arrangements made to bring about or other connected to the qualifying change.

14. Subsection 9 provides that section 730C does not apply to a deductible amount to the extent that section 730D (2) applies to it (in s.730C(9)(a)) or a loss, or any part of a loss, to which section 433(2) of CTA 2010 applies ("sale of lessors"), derives from it (in s730C(9)(b)).

15. New Section 730D provides the restriction which disallows deductible amounts where there is a profit transfer.

16. Subsection 1 provides that section 703D applies_where profits transfer arrangements are made which results in an increase in the total profits of C, or any connected company, in any accounting period ending on or after the relevant day.

17. Subsection 2 provides that if conditions D & E are met a deductible amount may not be brought into account by C, or any connected company, as a deduction in any accounting period ending on or after the relevant day.

18. Subsection 3 explains condition D: on the relevant day it is highly likely that the deductible amount would be brought into account by C or a connected company as a deduction in an accounting period ending on or after the relevant day.

19. Subsection 4 explains arrangements and events to have regard to when considering what is "highly likely".

20. Subsection 5 explains condition E: where the purpose or one of the main purposes, of the profit transfer arrangements is to bring the deductible amount into account as a deduction in any accounting period ending on or after the relevant day.

21. Subsection 6 applies the just and reasonable provision contained in subsection 7 where if section 730D(2) applies and where the company would have had profits in that accounting period in the absence of any profit transfer arrangements and disregarding any deductible amounts.

22. Subsection 7 provides that the deductible amount is disallowed only in such a proportion that is just and reasonable.

23. Schedule 1 Paragraph 2 makes consequential amendments to CTA 2010.

24. Schedule 1 Paragraph 3 provides the commencement provisions and the date from which section 730C should be applied after section 432.

25. Schedule 1 Paragraph 3 subparagraph 2 provides that the amendments apply to a qualifying change on or after 20 March 2013, unless either arrangements to bring about the qualifying change had been entered into before that date or there was an agreement or common understanding between the parties as to the principal terms on which the qualifying change will be brought about

26. Schedule 1 Paragraph 3 subparagraph 3 provides that the provision in 730C(9)(b) does not apply prior to 26 June 2013.

BACKGROUND

27. This clause is one of two preventing loss buying introduced by M5149.

28. The clause uses the term "qualifying change" as defined in Section 212C of Chapter 16A of Part 2 CAA 2001

29. Section 212C CAA2001 defines a qualifying change in relation to a company as -

- A change in ownership of a company,

- When a company becomes a member of a group

- When a company moves from a group into a consortium.
- When a consortium member increases it ownership of a consortium company.
- Where C ceases to carry on the whole or part of an activity and the activity (or part of it) begins to be carried on in partnership by two or more companies.
- When a partner increases its share in a partnership that is carrying out an activity

Current corporate tax loss buying rules

30. The general concept is that losses brought forward or after a change in ownership should be allowable only to the company and trade in which they occurred.

31. Section 39 of CTA 2010 provides that if a company sells its trade to a company that is not within the same 75% ownership then the cessation rules apply and the losses do not transfer.

32. Part 14 of CTA 2010 deals with realised losses where there is a change in ownership of a company (and where other circumstances apply). If the Part applies losses arising prior to the change are no longer available for periods after the change in ownership.

EXPLANATORY NOTE

NEW CLAUSE 5: NEW SCHEDULE 2

CORPORATION TAX: TARGETED LOSS BUYING RULES

SUMMARY

33. This clause expands the application of Chapter 16A of Part 2 of the Capital Allowances Act 2001 (CAA 2001) which restricts the relevant excess of allowances after a qualifying change in relation to a company (C). . It expands Chapter 16A to apply to all "qualifying activities" (under section 15 of CAA 2001) and not just trades, as currently. It also applies Chapter 16A where that relevant excess of allowances is £50 million or more (in any circumstances); or where the relevant excess is £2 million or more and less than £50 million (where the amount is not insignificant); or where the relevant excess is less than £2 million (and the qualifying change has an unallowable purpose).

DETAILS OF THE SCHEDULE

34. Schedule 1 Part 1 amends Chapter 16A CAA 2001.

35. Paragraph 2 amends 212B makes consequential amendments and introduces the requirement for a qualifying change to meet the "limiting conditions".

36. Paragraph 3 inserts 212LA after 212L providing the four limiting conditions.

37. Subsection (2) provides that Condition A is met where the relevant excess of allowances is £50 million or more.

38. Subsection (3) explains Condition B. Where the relevant excess of allowances is £2 million or more but less than £50 million and the amount is not insignificant in the context of the value of the benefits obtained by a "relevant person" through the qualifying change or "change arrangements" then Condition B is met.

39. Subsection (4) defines "relevant person" as the company acquiring the company or the activity in partnership or any person connected with the company acquiring the company or trade.

40. Subsection (5) explains Condition C. This is met if the amount of the relevant excess of allowances is less than £2 million and the qualifying change has an unallowable purpose. The subsection refers to section 212M which provides the definition of unallowable purpose.

41. Subsection (6) explains Condition D. This is met if there are arrangements the purpose of which is to procure that the relevant excess allowance is below the £50 million or £2 million tests or to procure that the relevant

excess of allowances is a smaller proportion of the total amount or value of the benefits referred to in Condition B.

42. Subsection 7 defines the amount of the relevant excess and arrangements.

43. Paragraph (4) renames Chapter 16A "restrictions on allowance buying".

44. Paragraphs 5-12 extend the restrictions on allowance buying to all other qualifying activities (under section 15 of CAA 2001) and provides the consequential amendments arising from this extension.

45. Paragraph 13 provides that the amendments apply to a qualifying change on or after 20 March 2013, unless either arrangements to bring about the qualifying change had been entered into before that date or there was an agreement or common understanding between the parties as to the principal terms on which the qualifying change will be brought about.

BACKGROUND

46. This clause is one of two preventing loss buying.

47. Chapter 16A of Part 2 CAA 2001 was introduced in Finance Act 2010 in order to prevent tax-motivated capital allowance buying. Chapter 16A applies to situations where a company in a group decided not to claim all the allowances to which it was entitled and that company is then subject to a qualifying change.

48. Chapter 16A applies where there is a company C and

- the tax written down value (TWDV) of the company's plant or machinery assets exceeds the balance sheet value (BSV) of those assets. This excess is the relevant excess of allowances.
- there is a "qualifying change of ownership" in relation to C; and in certain circumstances where the qualifying change has an "unallowable purpose".

49. Prior to this amendment Chapter 16A applied to restrict claims to trading losses either by set off in year by carry back or by group relief where there is a qualifying change with an unallowable purpose as one where the main purpose or one of the main purposes of the change arrangements is to obtain a tax advantage for any person.

Corporation Tax – "Targeted Loss Buying" Rules

Technical Note
26th June 2013

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Foreword

On 20th March 2013 the Chancellor of the Exchequer announced that the Government proposed to introduce legislation in the Finance Bill 2013 to prevent companies entering arrangements to access, as part of a business transfer, various forms of unrealised corporation tax losses from unconnected third parties.

Technical detail on the circumstances and manner in which the proposed legislation will operate was published on 20th March. This was followed on 28th March 2013 by the publication of draft legislation for a period of technical consultation.

Draft legislation, amended in light of consultation responses, was introduced to Finance Bill 2013 on 26th June 2013.

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Chapter 1: Introduction

1. The Government announced, at Budget 2013, that it intended to bring the tax treatment of unrealised amounts, involved in a transfer between unconnected parties, more closely into line with the longstanding treatment of realised losses.

2. The proposed changes introduce three separate rules to combat 'loss buying'.

3. The first rule expands the application of Chapter 16A of Part 2 of the Capital Allowances Act 2001 (CAA 2001). The other two rules are targeted anti-avoidance rules (TAARs) to be included in a new Part in CTA 2010: one to counter tax motivated reorganisations between unconnected parties involving other forms of relevant deductions; the other to counter arrangements that aim to transfer profits to companies so that the relevant deductions can be used.

4. The draft legislation was published on 28th March 2013 for a period of technical consultation which closed on 2nd May 2013.

5. This note contains the draft legislation added today to the Finance Bill, a summary of the responses to the Technical Consultation and an explanation of the amendments that have been made to the previously published legislation in light of those representations. Further guidance is also provided on the manner in which HMRC will interpret some aspects of the new rules.

Chapter 2: Responses to Technical Consultation and related amendments to the previously published draft legislation

Responses to the Technical Consultation

6. Nine responses were received to the technical consultation – four from legal firms, two from accountancy firms and three from individual businesses. The majority of representations related to the technical application of the legislation rather than the underlying policy intent, although reference was made to the TAARs' application in certain sectors.

7. Questions that were raised included:

   - the interaction between the TAARs and existing capital allowances anti-avoidance legislation involving sales of lessor companies;
   - whether the impact of the "profit transfer" element of the TAARs was overly restrictive;
   - whether the TAARs could inadvertently restrict group relief in certain circumstances;
   - the order of legislative precedence for scenarios falling within more than one section of the new legislation;
   - whether the commencement rule operated too harshly on proposed transactions where, before 20 March, a common understanding had been reached but not an unconditional obligation in a contract, between parties as to a qualifying change.

Interaction with existing capital allowance rules

8. Concern was expressed that the proposed draft legislation would prevent leasing companies from obtaining tax relief for certain expenses deemed to have been incurred under the Sales of Lessors rules in Chapters 3 and 4 of Part 9 Corporation Tax Act 2010 (CTA 2010).

9. Section 432 of CTA 2010 currently restricts the use of the deemed expense in relation to certain avoidance arrangements. The TAARs also apply to arrangements that involve a main purpose of securing relief for certain tax deductions. While the "deduction transfer" TAAR applies more widely than sale of lessors rules (in that it applies where there is no loss in the company overall and it acts to deny the deduction as opposed to streaming it) both sets of rules could apply to a particular arrangement.

10. Given the avoidance focus of the TAAR, it is the Government's view that it would be inappropriate to disapply the TAARs merely because section 432 did not apply. Accordingly, there has been no change of substance to the draft legislation to reflect

this concern. However, as set out in paragraphs 20-27 below, the order of priority of the various rules has been clarified.

Elements of the TAARs overly restrictive

11. Representations were received expressing concern that if the "profit transfer" TAAR (s.730D) applies, all deductible amounts were to be restricted from being brought into account. That being in contrast to the "deduction transfer" TAAR (s.730C), which only prevents those amounts being brought into account in a relevant claim (see s.730C(2)).

12. In light of these representations the Government has decided to ease the application of s.730D. The easement ensures that if there are profit transfer arrangements, deductible amounts that meet the conditions set out in the legislation may not be brought into account; but, if there would have been profits not arising as a result of the profit transfer arrangements, the deductible amounts may be brought into account on a just and reasonable basis.

13. The rationale behind this is that, in case where a company has both profits that arise from the transfer arrangements and profits that do not, then relief for the deductible amounts should be restricted in relation to the transferred profits but not in relation to the other profits.

14. Examples of how the "just and reasonable" easement will operate are in Chapter 3.

Inadvertent group relief restriction

15. Respondents suggested that the deduction-buying element of the TAAR could apply inappropriately in a number of scenarios. For example:

- Scenario A: Companies A and B are part of the X group. Companies A and B are both acquired and become members of the Y group.

- Scenario B: There is change in the ownership of a company C followed by a group relief claim in the acquiring group which does not involve C but which does involve deductible amounts.

16. In scenario A, since there is a change in ownership in relation to a company it is theoretically possible the TAAR would have restricted a group relief claim involving a deductible amount between companies A and B, even though A & B have always been grouped together (and could have made such a claim even in the absence of the change).

17. In scenario B, since there is a change of ownership and since the TAAR prevents deductible amounts being included in a group relief claim made by any company connected with C, then existing members of the acquiring group (i.e. initially

unconnected with C) could be prevented by the TAAR from surrendering their deductible amounts following the qualifying change.

18. In both the outlined scenarios, HMRC would have accepted that the second TAAR condition (the requirement that a main purpose of the change arrangements was to secure that the deductible amounts would be group relived) would not have been met where the amounts could have been group relieved in the absence of the qualifying change. However, to ensure total clarity of application a clearer rule has been inserted that does not rely upon purpose.

19. Accordingly the new rule (s.730C(4)) provides that the deductible amount does not include any amount which could have been included in a group relief claim absent the qualifying change of ownership.

A general priority rule

20. New Part 14A in CTA 2010 includes two restrictions on the circumstances in which deductible amounts may be brought into account where there has been a qualifying change in relation to a company (C).

21. S730C restricts claims for group relief and relief for trade losses against total profits, relating to deductible amounts, where the main purpose or one of the main purposes, of arrangements connected to the qualifying change is for the deductible amounts to be the subject of or brought into account as a deduction in such a claim.

22. S730D restricts deductible amounts from being brought into account where there are 'profit transfer arrangements' (i.e. arrangements resulting in an increase in the total profits of C, or a company connected to C) the main purpose, or one of the main purposes, of which is to bring the deductible amount into account.

23. Representations were made that a priority rule was required where both the loss buying and profits transfer sections of the TAAR both apply. Similarly representations were also made regarding the interaction between Part 14A and the Sales of Lessors anti-avoidance provisions in section 432 and 433 CTA 2010.

24. In light of these representations the draft legislation has been amended to make clear an order of legislative precedence to apply to such interaction. The revised legislation therefore provides that:

- section 730D applies first (before section 433 or section 730C) to restrict any deductible amounts from being brought into account;
- section 433 applies after section 730D (but before section 730C applies) in so far as the expense is not dealt with by s.730D or to the extent that there are any remaining deductible amounts after the prior application of section 730D.
- to the extent that any deductible amounts survive the application of section 730D and/or section 433, section 730C may then apply.

25. Without this rule stating the precedence between the provisions, the subsequent legislation (in Part 14A) would take priority over s.433. To avoid any potential unfairness relating to this order of precedence, the draft provisions have been revised to include a prospective commencement date for the precedence rule as between section 433 and section 730C. That provision now has effect in relation to a qualifying change if the relevant day of the change is on or after 26 June 2013.

26. The rule giving precedence to section 730D over section 433 is a clarification of the position that has applied since 20 March 2013.

Level of Agreement at Commencement

27. The commencement rule as originally drafted applied to cases where the change of ownership occurs on or after 20 March (or where such a change occurs after that date pursuant to an unconditional obligation in a contract before that date).

28. Representations were made that this commencement rule operates harshly on proposed transactions where, before 20 March, a common understanding had been reached (short of an unconditional obligation in a contract) between parties as to a qualifying change. In such cases, the availability of relevant deductible amounts would have been taken into account as part of that common understanding.

29. In light of these representations, the impact of the TAAR on this type of proposed transactions has been considered extremely carefully. The TAARs apply to arrangements that would traditionally not have fallen within the scope of any anti-avoidance legislation, and which some may have regarded as legitimate tax planning. Their main aim is to deter companies from entering into future transactions rather than to catch arrangements that were substantially final. With other anti-avoidance measures, the Government would typically be satisfied that catching such transactions is acceptable but the Government is content that an easement to the commencement rule would be appropriate in this case.

30. The commencement provision has therefore been amended to apply all elements of the new legislation to any qualifying change happening on or before 20 March (i.e. Budget day) unless (a) the arrangements made to bring about the change had been agreed before that date or (b) there was a common understanding before 20 March between the parties to the arrangements as to the principal terms on which the qualifying change would be brought about.

Chapter 3: Further HMRC Guidance

Application of s730D - “Just and Reasonable”

31. The following short examples illustrate how the “just and reasonable” easement works in practice

Example One

	Initial Calculation	Amended Calculation
“Original” Profits	6	6
“Transferred” Profits	10,000	10,000
“Deductible Amount”	100,000	90,000 (10,000 disallowed -s.730D)
Profit	nil	nil (loss c/f 79,994)

Example Two

	Initial Calculation	Amended Calculation
“Original” Profits	6	6
“Transferred” Profits	100,000	100,000
“Deductible Amount”	100,000	6 (99,994 disallowed -s.730D)
Profit	6	100,000

Example Three

	Initial Calculation	Amended Calculation
“Original” Profits	6	6
“Transferred” Profits	120,000	120,000
“Deductible Amount”	100,000	nil (100,000 disallowed -s.730D)
Profit	20,006	120,006

Example Four

	Initial Calculation	Amended Calculation
“Original” Profits	20,000	20,000
“Transferred” Profits	40,000	40,000
“Deductible Amount”	60,000	20,000 (40,000 disallowed -s.730D)
Profit	60,000	40,000

“Not Insignificant”

32. As amended, Part 16A CAA 2001 states that the qualifying change meets one of the limiting conditions if one of the conditions A-D is met. Condition B is fulfilled where the amount of the relevant excess of allowances is £2 million or more but less than £50 million and is not insignificant as a proportion of the total amounts of the benefits derived by any relevant person through the qualifying change or change arrangements.

33. The word *'insignificant'* is not defined, so it takes its normal meaning. In general terms any relevant excess that is 5% or less of the amount paid will be considered insignificant. However, in the course of the consultation it was suggested it would be helpful if further guidance was given on what would be regarded as not insignificant.

34. The consideration of whether an amount is considered insignificant should be made in the context of the whole deal between two parties and the connected companies of those parties. The following scenarios demonstrate where the relevant excess of allowances fall between the monetary parameters but would be considered insignificant.

35. There is a qualifying change and as a result Company A will be able to access a relevant excess of allowances of £30m the excess will be considered insignificant

- the cost to Company A of effecting the qualifying change is £600 m (i.e. where the proportion is 5% or less);

- Company A is part of a Group X and the qualifying change is part of a larger deal where other companies in Group X are also involved in qualifying changes with related parties, and the total paid by Group X to effect those qualifying changes is £600m or more;

- Company A purchases a company "C" from Group Y with relevant allowances for £50m; however as part of the qualifying change Company A agrees to write off £550m of loans/outstanding debts from Group Y.

Transfer of deductions

Mr Chancellor of the Exchequer

NC4

To move the following Clause:—

‘Schedule [*Transfer of deductions*]—

(a) inserts into CTA 2010 a new Part 14A (transfer of deductions), and

(b) makes consequential provision.’.

Restrictions on buying capital allowances

Mr Chancellor of the Exchequer

NC5

To move the following Clause:—

‘ Schedule [*Restrictions on buying capital allowances*] contains provision amending Chapter 16A of Part 2 of CAA 2001 (restrictions on allowance buying).’

Mr Chancellor of the Exchequer

NS1

To move the following Schedule:—

‘TRANSFER OF DEDUCTIONS

New Part 14A of CTA 2010

1 After Part 14 of CTA 2010 insert—

“Part 14A

TRANSFER OF DEDUCTIONS

730A Overview

(1) This Part makes provision restricting the circumstances in which deductible amounts may be brought into account where there has been a qualifying change in relation to a company.

(2) For the meaning of “deductible amount” and “qualifying change” see section 730B.

730B Interpretation of Part

(1) In this Part—

"arrangements" includes any agreement, understanding, scheme, transaction or series of transactions (whether or not legally enforceable),

"C" means the company mentioned in section 730A(1),

"deductible amount" means—

(a) an expense of a trade,

(b) an expense of a UK property business or an overseas property business,

(c) an expense of management of a company's investment business within the meaning of section 1219 of CTA 2009,

(d) a non-trading debit within the meaning of Parts 5 and 6 of CTA 2009 (loan relationships and derivative contracts) (see section 301(2) of that Act), or

(e) a non-trading debit within the meaning of Part 8 of CTA 2009 (intangible fixed assets) (see section 746 of that Act),

but does not include any amount that has been taken into account in determining RTWDV within the meaning of Chapter 16A of Part 2 of CAA 2001 (restrictions on allowance buying) (see section 212K of that Act),

"qualifying change", in relation to a company, has the same meaning as in that Chapter, and

"the relevant day" means the day on which the qualifying change in relation to C occurred.

(2) In this Part, references to bringing an amount into account "as a deduction" in any period are to bringing it into account as a deduction in that period—

(a) in calculating profits, losses or other amounts for corporation tax purposes, or

(b) from profits or other amounts chargeable to corporation tax.

730C Disallowance of deductible amounts: relevant claims

(1) This section applies where a relevant claim is made for an accounting period ending on or after the relevant day.

(2) "Relevant claim" means a claim by C, or a company connected with C, under—

(a) section 37 (relief for trade losses against total profits), or

(b) Chapter 4 of Part 5 (group relief).

(3) A deductible amount that meets conditions A and B may not be the subject of, or brought into account as a deduction in, the claim.

(4) But subsection (3) does not exclude any amount which could have been the subject of, or brought into account as a deduction in, the claim in the absence of the qualifying change.

(5) Condition A is that, on the relevant day, it is highly likely that the amount, or any part of it, would (disregarding this Part) be the subject of, or brought into account as a deduction in, a relevant claim for an accounting period ending on or after the relevant day.

(6) Any question as to what is "highly likely" on the relevant day for the purposes of subsection (5) is to be determined having regard to—

(a) any arrangements made on or before that day, and

(b) any events that take place on or before that day.

(7) Condition B is that the main purpose, or one of the main purposes, of change arrangements is for the amount (whether or not together with other deductible amounts) to be the subject of, or brought into account as a deduction in, a relevant claim for an accounting period ending on or after the relevant day.

(8) "Change arrangements" means any arrangements made to bring about, or otherwise connected with, the qualifying change.

(9) This section does not apply to a deductible amount if, and to the extent that—

(a) section 730D(2) applies to it, or

(b) for the purposes of section 432, a loss, or any part of a loss, to which section 433(2) applies derives from it.

730D Disallowance of deductible amounts: profit transfers

(1) This section applies where arrangements ("the profit transfer arrangements") are made which result in—

(a) an increase in the total profits of C, or of a company connected with C, or

(b) a reduction of any loss or other amount for which relief from corporation tax could (disregarding this section) have been given to C or a company connected with C,

in any accounting period ending on or after the relevant day.

(2) A deductible amount that meets conditions D and E may not be brought into account by C, nor any company connected with C, as a deduction in any accounting period ending on or after the relevant day.

(3) Condition D is that, on the relevant day, it is highly likely that the amount, or any part of it, would (disregarding this Part) be brought into account by C, or any company connected with C, as a deduction in any accounting period ending on or after the relevant day.

(4) Any question as to what is "highly likely" on the relevant day for the purposes of subsection (3) is to be determined having regard to—

(a) any arrangements made on or before that day, and

(b) any events that take place on or before that day.

(5) Condition E is that the main purpose, or one of the main purposes, of the profit transfer arrangements is to bring the amount (whether or not together with other deductible amounts) into account as a deduction in any accounting period ending on or after the relevant day.

(6) Subsection (7) applies if—

(a) (disregarding subsection (7)) subsection (2) would prevent a deductible amount being brought into account by a company as a deduction in any accounting period ending on or after the relevant day, and

(b) in the absence of the profit transfer arrangements and disregarding any deductible amounts, the company would have an amount of total profits for that accounting period.

(7) Subsection (2) applies only in relation to such proportion of the deductible amount mentioned in subsection (6)(a) as is just and reasonable."

Consequential amendments

2(1) In section 1(4) of CTA 2010 (overview of Act), after paragraph (a) insert—

"(aa) transfer of deductions (see Part 14A),".

(2) In section 432 of that Act (sale of lessors: restriction on relief for certain expenses), after subsection (1) insert—

"(1A) For the purposes of subsection (1), an expense is to be disregarded if, and to the extent that, section 730D(2) (disallowance of deductible amounts: profit transfers) applies to it."

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

"arrangements (in Part 14A)	section 730B"
"as a deduction (in Part 14A)	section 730B"
"C (in Part 14A)	section 730B
"deductible amount (in Part 14A)	section 730B"
"qualifying change (in Part 14A)	section 730B"
"the relevant day (in Part 14A)	section 730B".

Commencement and transitional provision

3(1) The amendments made by this Schedule have effect in relation to a qualifying change if the relevant day is on or after 20 March 2013.

(2) But those amendments do not have effect if before that date—

(a) the arrangements made to bring about the qualifying change were entered into, or

(b) there was an agreement, or common understanding, between the parties to those arrangements as to the principal terms on which the qualifying change would be brought about.

(3) If—

(a) the relevant day in relation to a qualifying change is before 26 June 2013, or

(b) paragraph (a) or (b) of sub-paragraph (2) was satisfied before that date,

those amendments have effect in relation to the qualifying change as if section 730C(9)(b) were omitted.'.

Mr Chancellor of the Exchequer

NS2

To move the following Schedule:—

‘RESTRICTIONS ON BUYING CAPITAL ALLOWANCES

Introductory

1 Chapter 16A of Part 2 of CAA 2001 (avoidance involving allowance buying) is amended as follows.

Restrictions where certain conditions met

2(1) Section 212B (circumstances where Chapter 16A applies) is amended as follows.

(2) For subsection (1)(d) substitute—

“(d) the qualifying change meets one of the limiting conditions.”

(3) For subsection (4) substitute—

“(4) Sections 212LA and 212M set out the limiting conditions and specify when those conditions are met.”

3 After section 212L insert—

“Limiting conditions

212LA Limiting conditions

(1) The qualifying change meets one of the limiting conditions if condition A, B, C or D is met.

(2) Condition A is that the amount of the relevant excess of allowances is £50 million or more.

(3) Condition B is that the amount of the relevant excess of allowances—

(a) is £2 million or more but less than £50 million, and

(b) is not insignificant as a proportion of the total amount or value of the benefits derived by any relevant person by virtue of the qualifying change or change arrangements.

(4) “Relevant person” means a person who, at the end of the relevant day, is—

(a) a principal company of C,

(b) a person carrying on the relevant activity in partnership, or

(c) a person who is connected to a person within paragraph (a) or (b) (within the meaning of section 1122 of CTA 2010).

(5) Condition C is that—

(a) the amount of the relevant excess of allowances is less than £2 million, and

(b) the qualifying change has an unallowable purpose.

See section 212M for the meaning of “unallowable purpose”.

(6) Condition D is that the main purpose, or one of the main purposes, of any arrangements is to procure that condition A or B or paragraph (a) of condition C is not met.

(7) In this section—

the amount of the relevant excess of allowances is the difference between RTWDV and BSV (see sections 212K and 212L);

"change arrangements" and "arrangements" have the same meaning as in section 212M."

4 In consequence of the amendments made by paragraphs 2 and 3, the heading to Chapter 16A becomes "RESTRICTIONS ON ALLOWANCE BUYING".

Extension of restrictions to other qualifying activities

5(1) Section 212B (circumstances where Chapter 16A applies) is amended as follows.

(2) In subsection (1)—

(a) in paragraph (a), for "a trade ("the relevant trade")" substitute "a qualifying activity ("the relevant activity")", and

(b) in paragraph (c), for "trade" (in both places) substitute "activity".

(3) In subsection (3) for "trade" substitute "activity".

6(1) Section 212C (when there is a a qualifying change in relation to C) is amended as follows.

(2) In subsection (4)—

(a) after "Condition C is that" insert "the relevant activity is a trade (within the meaning of this Part) and", and

(b) for "trade", where it appears after "the relevant" (in both places), substitute "activity".

(3) In subsection (5) for "trade" (in both places) substitute "activity".

7(1) Section 212I (relevant percentage share) is amended as follows.

(2) In subsections (1) and (3) for "trade" substitute "activity".

(3) In subsection (2) for "a trade" substitute "an activity".

8 In section 212J(1) (relevant excess of allowances) for "trade" substitute "activity".

9 In section 212K(2), (3), (4) and (5) (relevant tax written-down value) for "trade" substitute "activity".

10 In section 212N(2), (3) and (4) (old and new accounting periods) for "trade" substitute "activity".

11(1) Section 212P (effect of excess on pools) is amended as follows.

(2) In subsection (3)—

(a) for "a trade (or part of a trade)" substitute "a qualifying activity (or part of a qualifying activity)",

(b) for "the activities of that trade (or part of a trade)" substitute "that activity (or that part of an activity)",

(c) after "its trade" insert "or business",

(d) for "those activities" substitute "that activity (or that part)", and

(e) after "separate trade" insert "or business".

(3) In subsection (4)—

(a) after "section 37" insert ", 62 or 66",

(b) omit "trade",

(c) for "earlier" substitute "other", and

(d) after "period)" insert "or section 259 or 260(3) of this Act (special leasing)".

12(1) Section 212Q (when there are postponed capital allowances) is amended as follows.

(2) In subsection (3)—

(a) for "a trade (or part of a trade)" substitute "a qualifying activity (or part of a qualifying activity)",

(b) for “the activities of that trade (or part of a trade)” substitute “that activity (or that part of an activity)”,

(c) after “its trade” insert “or business”,

(d) for “those activities” substitute “that activity (or that part)”, and

(e) after “separate trade” insert “or business”.

(3) In subsection (4)—

(a) after “section 37” insert “, 62 or 66”, and

(b) after “CTA 2010” insert “or section 259 or 260(3) of this Act”.

Commencement

13(1) The amendments made by this Schedule have effect in relation to a qualifying change if the relevant day (within the meaning of Chapter 16A of Part 2 of CAA 2001) is on or after 20 March 2013.

(2) But those amendments do not have effect if before that date—

(a) the arrangements made to bring about the qualifying change were entered into, or

(b) there was an agreement, or common understanding, between the parties to those arrangements as to the principal terms on which the qualifying change would be brought about.’.

Chapter 5: Explanatory Note

CORPORATION TAX: TARGETED LOSS BUYING RULES

SUMMARY

1. This clause introduces a new Part 14A in Corporation Tax Act 2010 (CTA 2010) which includes two new substantive restrictions on the circumstances in which deductible amounts may be brought into account where there has been a qualifying in relation to a company (C). The deductible amounts are ones which, at the date of the qualifying change (the "relevant day"), can be regarded as highly likely to arise as deductions for an accounting period ending on or after that day. The first restriction is on claims for group relief and relief for trade losses against total profits for deductible amounts in accounting periods ending on or after the relevant day where the purpose, or one of the main purposes, of arrangements connected to the qualifying change is for the deductible amounts to be the subject of, or brought into account as a deduction in, such a claim. The second restriction is in respect of deductible amounts where there are 'profit transfer arrangements' (i.e. arrangements which result in an increase in the total profits of C, or a company connected to C) where the purpose, or one of the main purposes, of those arrangements is to bring the deductible amount into account as a deduction in any accounting period ending on or after the relevant day.

DETAILS OF THE SCHEDULE

2. Schedule 1 amends CTA 2010 by introducing a new Part 14A with the heading "Transfer of Deductions."

3. New Section 730A provides an overview of the Part.

4. New Section 730B explains the meaning of "deductible amount" and "qualifying change". A "deductible amount" is any expense of a trade or property business, an expense of management of an investment business, non-trading debits within the meaning of Parts 5 and 6 of the Corporation Tax Act 2009 (CTA 2009) (loan relationships, derivative contracts) or a non-trading debit within the meaning of Part 8 CTA 2009 (intangible fixed assets). "Deductible amount" does not include any amount that has been taken into account in determining RTWDV within the meaning of Chapter 16A of Part 2 of Capital Allowances Act 2001 (CAA 2001). A "qualifying change" has the same meaning in Part 14A as in Chapter 16A of Part 2 CAA 2001. Subsection (2) explains the references to bringing an amount into account "as a deduction".

5. New Section 730C provides for the restriction which applies to disallow deductible amounts for relevant claims.

6. Subsection 1 applies the section where a relevant claim is made for an accounting period on or after the qualifying change.

7. Subsection 2 defines a relevant claim as a claim for relief for trade losses against total profits (under section 37 of CTA 2010) or group relief (under Chapter 4 of Part 5 of CTA 2010) by C or a company connected with C.

8. Subsection 3 provides that if two conditions (A and B) are met the deductible amount may not be the subject of, or brought into account as a deduction in, a relevant claim.

9. Subsection 4 applies to allow any amount that could have been claimed or brought into account as a deduction in the claim if there had not been a qualifying change.

10. Subsection 5 explains condition A: on the relevant day it is highly likely that the deductible amount would be the subject of, or brought into account as a deduction in a relevant claim for an accounting period ending on or after the relevant day.

11. Subsection 6 explains that what is "highly likely" is determined having regard to any arrangements or events that take place on or before the qualifying change.

12. Subsection 7 explains condition B: where the purpose, or one of the main purposes, of any "change arrangements" is for the deductible amount to be the subject of, or brought into account as a deduction in a relevant claim.

13. Subsection 8 defines change arrangements as arrangements made to bring about or other connected to the qualifying change.

14. Subsection 9 provides that section 730C does not apply to a deductible amount to the extent that section 730D (2) applies to it (in s.730C(9)(a)) or a loss, or any part of a loss, to which section 433(2) of CTA 2010 applies ("sale of lessors"), derives from it (in s730C(9)(b)).

15. New Section 730D provides the restriction which disallows deductible amounts where there is a profit transfer.

16. Subsection 1 provides that section 703D applies where profits transfer arrangements are made which results in an increase in the total profits of C, or any connected company, in any accounting period ending on or after the relevant day.

17. Subsection 2 provides that if conditions D & E are met a deductible amount may not be brought into account by C, or any connected company, as a deduction in any accounting period ending on or after the relevant day.

18. Subsection 3 explains condition D: on the relevant day it is highly likely that the deductible amount would be brought into account by C or a connected company as a deduction in an accounting period ending on or after the relevant day.

19. Subsection 4 explains arrangements and events to have regard to when considering what is "highly likely".

20. Subsection 5 explains condition E: where the purpose or one of the main purposes, of the profit transfer arrangements is to bring the deductible amount into account as a deduction in any accounting period ending on or after the relevant day.

21. Subsection 6 applies the just and reasonable provision contained in subsection 7 where if section 730D(2) applies and where the company would have had profits in that accounting period in the absence of any profit transfer arrangements and disregarding any deductible amounts.

22. Subsection 7 provides that the deductible amount is disallowed only in such a proportion that is just and reasonable.

23. Schedule 1 Paragraph 2 makes consequential amendments to CTA 2010.

24. Schedule 1 Paragraph 3 provides the commencement provisions and the date from which section 730C should be applied after section 432.

25. Schedule 1 Paragraph 3 subparagraph 2 provides that the amendments apply to a qualifying change on or after 20 March 2013, unless either arrangements to bring about the qualifying change had been entered into before that date or there was an agreement or common understanding between the parties as to the principal terms on which the qualifying change will be brought about

26. Schedule 1 Paragraph 3 subparagraph 3 provides that the provision in 730C(9)(b) does not apply prior to 26 June 2013.

BACKGROUND

27. This clause is one of two preventing loss buying introduced by M5149.

28. The clause uses the term “qualifying change” as defined in Section 212C of Chapter 16A of Part 2 CAA 2001

29. Section 212C CAA2001 defines a qualifying change in relation to a company as -

- A change in ownership of a company,
- When a company becomes a member of a group
- When a company moves from a group into a consortium.
- When a consortium member increases it ownership of a consortium company.
- Where C ceases to carry on the whole or part of an activity and the activity (or part of it) begins to be carried on in partnership by two or more companies.
- When a partner increases its share in a partnership that is carrying out an activity

Current corporate tax loss buying rules

30. The general concept is that losses brought forward or after a change in ownership should be allowable only to the company and trade in which they occurred.

31. Section 39 of CTA 2010 provides that if a company sells its trade to a company that is not within the same 75% ownership then the cessation rules apply and the losses do not transfer.

32. Part 14 of CTA 2010 deals with realised losses where there is a change in ownership of a company (and where other circumstances apply). If the Part applies losses arising prior to the change are no longer available for periods after the change in ownership.

CORPORATION TAX: TARGETED LOSS BUYING RULES

SUMMARY

33. This clause expands the application of Chapter 16A of Part 2 of the Capital Allowances Act 2001 (CAA 2001) which restricts the relevant excess of allowances after a qualifying change in relation to a company (C). . It expands Chapter 16A to apply to all "qualifying activities" (under section 15 of CAA 2001) and not just trades, as currently. It also applies Chapter 16A where that relevant excess of allowances is £50 million or more (in any circumstances); or where the relevant excess is £2 million or more and less than £50 million (where the amount is not insignificant); or where the relevant excess is less than £2 million (and the qualifying change has an unallowable purpose).

DETAILS OF THE SCHEDULE

34. Schedule 1 Part 1 amends Chapter 16A CAA 2001.

35. Paragraph 2 amends 212B makes consequential amendments and introduces the requirement for a qualifying change to meet the "limiting conditions".

36. Paragraph 3 inserts 212LA after 212L providing the four limiting conditions.

37. Subsection (2) provides that Condition A is met where the relevant excess of allowances is £50 million or more.

38. Subsection (3) explains Condition B. Where the relevant excess of allowances is £2 million or more but less than £50 million and the amount is not insignificant in the context of the value of the benefits obtained by a "relevant person" through the qualifying change or "change arrangements" then Condition B is met.

39. Subsection (4) defines "relevant person" as the company acquiring the company or the activity in partnership or any person connected with the company acquiring the company or trade.

40. Subsection (5) explains Condition C. This is met if the amount of the relevant excess of allowances is less than £2 million and the qualifying change has an unallowable purpose. The subsection refers to section 212M which provides the definition of unallowable purpose.

41. Subsection (6) explains Condition D. This is met if there are arrangements the purpose of which is to procure that the relevant excess allowance is below the £50 million or £2 million tests or to procure that the relevant excess of allowances is a smaller proportion of the total amount or value of the benefits referred to in Condition B.

42. Subsection 7 defines the amount of the relevant excess and arrangements.

43. Paragraph (4) renames Chapter 16A "restrictions on allowance buying".

44. Paragraphs 5-12 extend the restrictions on allowance buying to all other qualifying activities (under section 15 of CAA 2001) and provides the consequential amendments arising from this extension.

45. Paragraph 13 provides that the amendments apply to a qualifying change on or after 20 March 2013, unless either arrangements to bring about the qualifying change had been entered into before that date or there was an agreement or common understanding between the parties as to the principal terms on which the qualifying change will be brought about.

BACKGROUND

46. This clause is one of two preventing loss buying.

47. Chapter 16A of Part 2 CAA 2001 was introduced in Finance Act 2010 in order to prevent tax-motivated capital allowance buying. Chapter 16A applies to situations where a company in a group decided not to claim all the allowances to which it was entitled and that company is then subject to a qualifying change.

48. Chapter 16A applies where there is a company C and

- the tax written down value (TWDV) of the company's plant or machinery assets exceeds the balance sheet value (BSV) of those assets. This excess is the relevant excess of allowances.

- there is a "qualifying change of ownership" in relation to C; and in certain circumstances where the qualifying change has an "unallowable purpose".

49. Prior to this amendment Chapter 16A applied to restrict claims to trading losses either by set off in year by carry back or by group relief where there is a

qualifying change with an unallowable purpose as one where the main purpose or one of the main purposes of the change arrangements is to obtain a tax advantage for any person.