



FINANCE (NO.2) BILL 2019-21 CLAUSE 18 AND SCHEDULE 2 (TEMPORARY EXTENSION OF PERIODS TO WHICH TRADE LOSSES MAY BE CARRIED BACK)

Issued 12 April 2021

Text of ICAEW briefing for MPs on **Finance (No.2) Bill 2019-21** clause 18 and schedule 2 published by the government on 11 March 2021.

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EXECUTIVE SUMMARY

1. We propose that amendments are made to s127 ITA 2007 in order to give effect to the stated purpose of paragraph 3(5). This sub-para relates to the extension of the extended loss carry back rules to losses incurred in UK furnished holiday letting (FHL) businesses in the tax years 2020/21 and 2021/22. Our proposed amendment to s127 would ensure that losses from UK FHL businesses in those tax years can be off-set against net income in the current tax year and the previous three years as stated in the FB Explanatory Notes at paragraph 27.

THE MEASURE

2. Schedule 2 part 1 sets out rules that allow individuals to carry back trading losses arising in the tax years 2020/21 and 2021/22 against net income arising in the current tax year and the previous three years. Without this provision, it is possible only to off-set trading losses against net income in the current year or the previous 12 months or carry forward against future trading profits.

DETAILED COMMENTS

The measure

3. Para 3 of Schedule 2 of the Finance Bill sets out various provisions about the relief available under paras 1 and 2. The Explanatory Notes to the Finance Bill state that “Para 3 (5) extends the application of paragraphs 1 and 2 to losses incurred in a furnished holiday letting business.”. We assume this means that the extended loss carry-back rules are intended to apply to UK FHL businesses in the same way that they apply to trades. S127 (1) – (3) treats a UK FHL business as a trade for various aspects of the tax legislation and all UK lettings of furnished holiday accommodation comprised in a person’s UK FHL business are treated as a single trade.

Our concern

4. S127 (3A) ITA 2007 ensures that any losses arising in a UK FHL business can only be carried forward against the profits of the same UK FHL business. It prohibits, amongst other things, the off-setting of UK FHL losses against other profits of the same period or the previous 12 months. Therefore, in order for para 3 (5) Schedule 2 of the Finance Bill to have the effect described in para 27 of the Finance Bill Explanatory Notes, it will be necessary temporarily to disapply s127 (3A).

Our recommendation

5. We recommend that a further sub-section is added to s127 ITA 2007 to disapply sub-section (3A) in tax years 2021/21 and 2021/22.
6. The effect of this amendment and para 3 (5) Schedule 2 would be to allow losses from UK FHL businesses in the tax years 2020/21 and 2021/22 to be off-set against net income in the current tax year and the previous three tax years.

Suggested amendment

7. Finance Bill Page 101, after line 36, insert after sub-para (5):

‘(5A) Insert after s127(3A) ITA 2007:

“(3B) Sub-section (3A) does not apply to losses incurred in a UK furnished holiday lettings business in the tax years 2020/21 and 2021/22.”.’

FURTHER INFORMATION

As part of our Royal Charter, we have a duty to inform policy in the public interest.