Written evidence submitted by the Chartered Institute of Taxation (FB07)

Carried-forward losses
(clauses 18 and19 and schedule 4)

Summary

- **This legislation has been rushed even though these provisions are not anti-avoidance provisions (in respect of which a shorter time frame for introduction can sometimes be justified)**
- **It is unsatisfactory that businesses have been put in a position of having to plan for these proposals before they are enacted due to their significantly retrospective effect (we are now more than half way through the tax year!)**
- **While the changes are part of a package intended to "*simplify and modernise the tax regime*", they are in fact very complicated**

The Proposal

Clauses 18 and 19 and Schedule 4 introduce new rules relating to the use of carried-forward losses by companies for corporation tax purposes. There are two main aspects to the proposals:

- Greater flexibility in the use of losses (enabling some companies to reduce the amount of corporation tax they pay in some circumstances)
- Restrictions on the amount of profit against which carried forward losses can be used (increasing corporation tax bills for some companies)

This measure is, overall, significantly revenue-raising. The Government expect to raise £1.36 billion from it over its first four years.

The Timetable

This legislation implements proposals first announced in the Business Tax Roadmap at Budget 2016. These proposals were consulted upon during summer 2016. In our view, these rules on losses have been rushed through in a very short time frame which has created concerns for our members and uncertainty for business. This uncertainty has been exacerbated by the fact that the legislation required to implement these complicated proposals has (a) not yet been enacted despite the start date of 1 April 2017 and (b) has been the subject of changes during summer 2017.

While the changes from the draft legislation published as part of Finance (No2) Bill 2017 have improved the legislation, this process has given businesses very little time to absorb the changes and organise themselves to comply with them.

From the time the proposals were announced at Budget 2016 it was clear that the legislation would be voluminous and highly complex. As we highlighted in our response to the consultation (in August 2016) the timetable proposed was not sufficient to properly consider all of the issues and to produce clear and workable legislation.

The unsatisfactory draft legislation published as part of Finance (No2) Bill 2017 was then removed from the pre-election Finance Bill, which caused more uncertainty for taxpayers. Although the delay in enacting the legislation has allowed a period of further informal consultation, which has improved the legislation, it inevitably led to a degree of uncertainty among those affected and has also resulted in taxpayers having to consider draft legislation which is not yet in force, but which will have retrospective effect once enacted.

With regard to the short timetable, it is also worth noting that these provisions are not anti-avoidance provisions (in respect of which a shorter time frame for introduction can sometimes be justified). Rather, the changes were proposed as part of a package intended to "*simplify and modernise the tax regime*", although in our view there are aspects of the changes which are very complicated and, in many cases, will involve a large number of detailed calculations, meaning that simplification will not be achieved.

Legislation for these new rules has, in our view, been "rushed" (notwithstanding the consultation and the additional time which became available as a result of the general election), and, in this case, the Government has not balanced its desires to raise some modest revenue with its duty to produce legislation that can be followed with predictability and certainty.

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