

RESOLUTION 1

EXPLANATORY NOTE

**NEW CLAUSE 8: TRANSFERS OF TRADE TO OBTAIN TERMINAL
LOSS RELIEF**

SUMMARY

1. New Clause 8 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 8 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’).

RESOLUTION 1

Mr Chancellor of the Exchequer

NC8

To move the following Clause:—

‘(1) In section 393A of ICTA (set off of losses against profits of same or earlier accounting period), after subsection (2D) insert—

“(2E) But subsection (2A) above does not apply by reason of a company ceasing to carry on a trade if—

(a) on the company ceasing to carry on the trade, any of the activities of the trade begin to be carried on by a person who is not (or by persons any or all of whom are not) within the charge to corporation tax, and

(b) the company’s ceasing to carry on the trade is part of a scheme or arrangement the main purpose, or one of the main purposes, of which is to secure that subsection (2A) above applies to a loss by reason of the cessation.”

(2) The amendment made by subsection (1) has effect in relation to cessations of a trade on or after 21 May 2009.’.