



Corporation tax losses – how relief can be obtained

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This article is designed to clarify the mechanisms that can be used by groups of companies to obtain relief for corporation tax trading losses incurred by a group/consortium member company. This article will be of interest to students of Professional 2 Advanced Taxation.

Introduction

It is common practice for businesses to organise their activities into different companies rather than different divisions of a single company. In light of this, the tax legislation provides for corporation tax loss relief for member companies of qualifying groups. Other reliefs for group companies are available and include reliefs such as the ability to make certain payments without deduction of income tax at the standard rate. This article focuses solely on the group/consortium loss relief provisions contained in sections 411 to 429 of the Tax Consolidation Act 1997 (TCA 1997).

Students that have studied the Professional 2 Advanced Taxation syllabus must know how to identify a corporation tax group/consortium and be able to apply the group/consortium relief provisions in respect of trading losses.

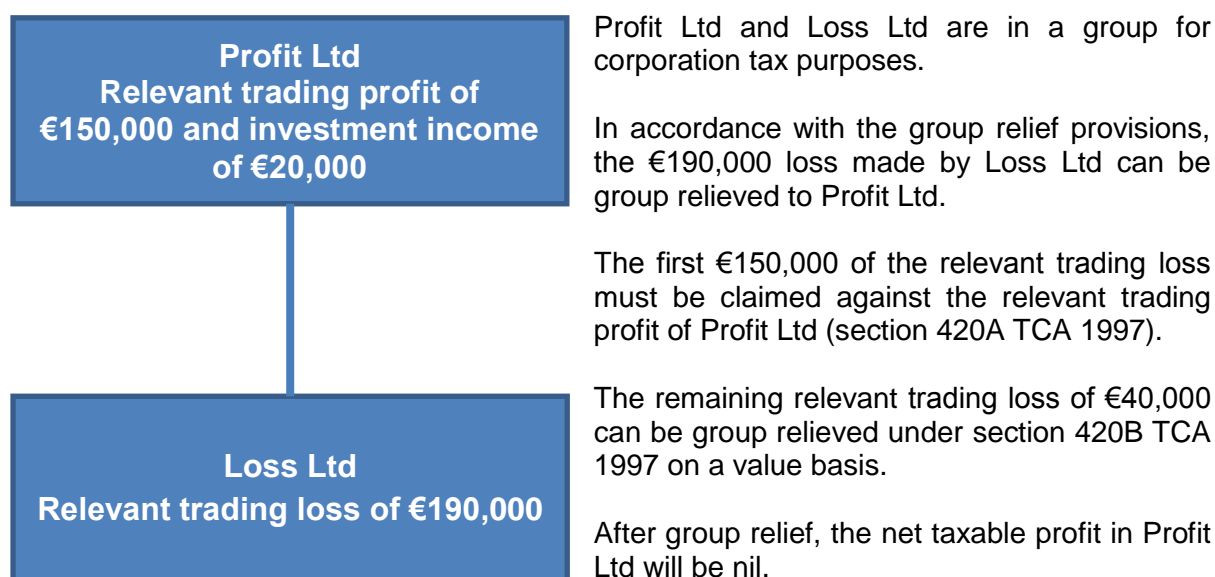
Losses which may be group relieved

Group relief for corporation tax operates by allowing group companies to surrender certain losses to other members of the group for offset against their profits. Trading losses, excess Case V capital allowances, excess management expenses and excess trade/non trade charges can all be group relieved.

The amount of trading loss which is available for group relief includes any capital allowances available for the period. Importantly, trading losses forward from an earlier accounting period are not available for group relief. Only current period losses can be group relieved.

The tax legislation refers to the surrendering of a relevant trading loss against the relevant trading income of another group company. This effectively means the surrendering of a loss which, had a profit been made, would have been chargeable at 12.5%. A relevant trading loss must be claimed firstly against the relevant trading income of the other group company (section 420A TCA 1997) and can only then be used on a value basis (section 420B TCA 1997) against the corporation tax liability for the other group company.

Example 1



What is a group for corporation tax purposes?

Under section 411 TCA 1997, two companies will form a group if one company is a 75% subsidiary of the other or both companies are 75% subsidiaries of a third company.

Indirect shareholdings may be used to establish a 75% relationship, provided the shares are owned by a company which is:

- Resident in Ireland;
- Resident in another EU country;
- Resident in an EEA country with which Ireland has signed a double taxation agreement;
- Resident in a country with which Ireland has signed a double taxation agreement;
- Quoted on a recognised stock exchange or
- A 75% subsidiary of a company quoted on a recognised stock exchange.

Shares held in a share dealing capacity whether directly or indirectly (i.e. where the profit on the sale of the shares would be a trading receipt) are ignored when trying to establish a 75% group relationship.

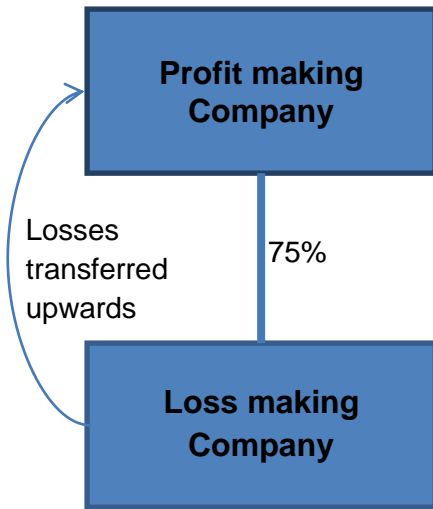
In addition to the 75% share capital test, there is also a 75% profit entitlement test and a 75% entitlement to assets on a winding up requirement.

Other important conditions and rules to remember about group relief

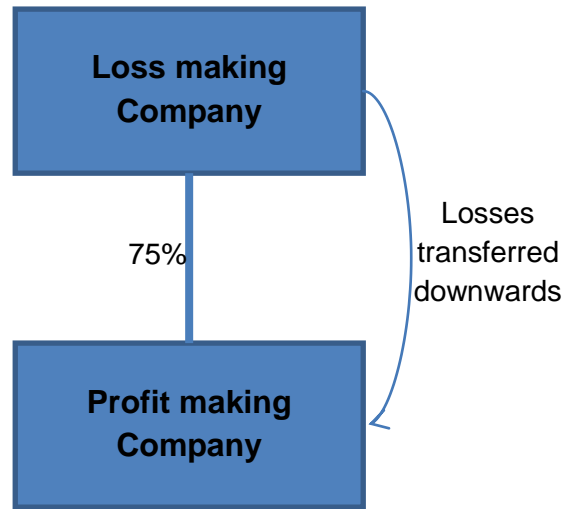
1. Corporation tax losses can be transferred up (example 2), down (example 3) and sideways in a qualifying group (example 4). More than one profit making company in a group can avail of loss relief from a group loss making company.

Examples of qualifying 75% loss group claims

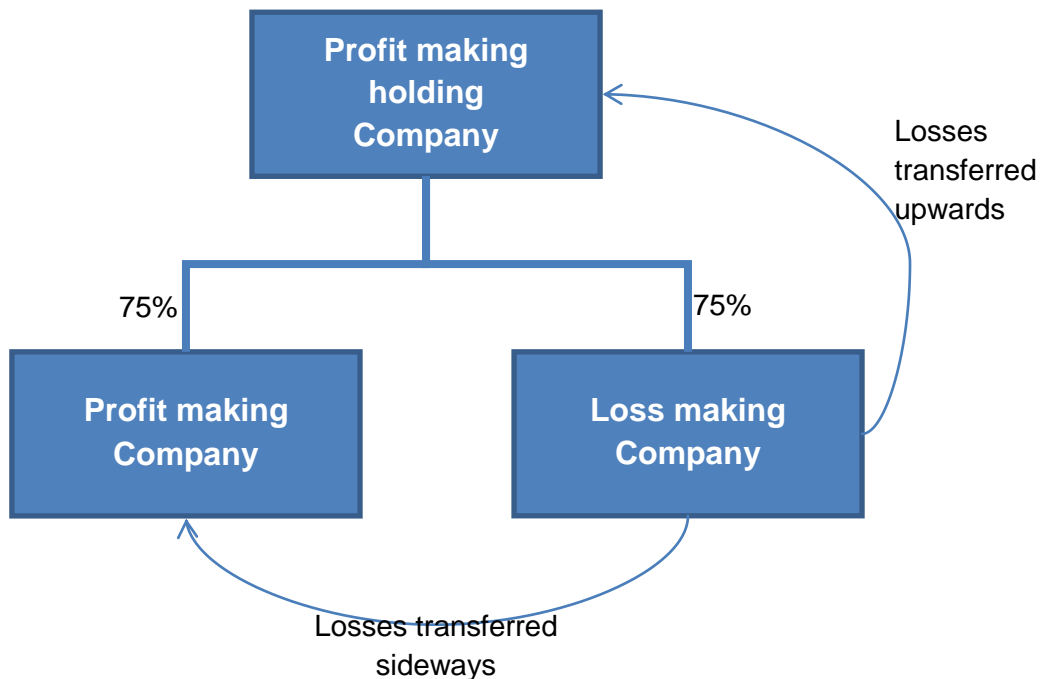
Example 2



Example 3

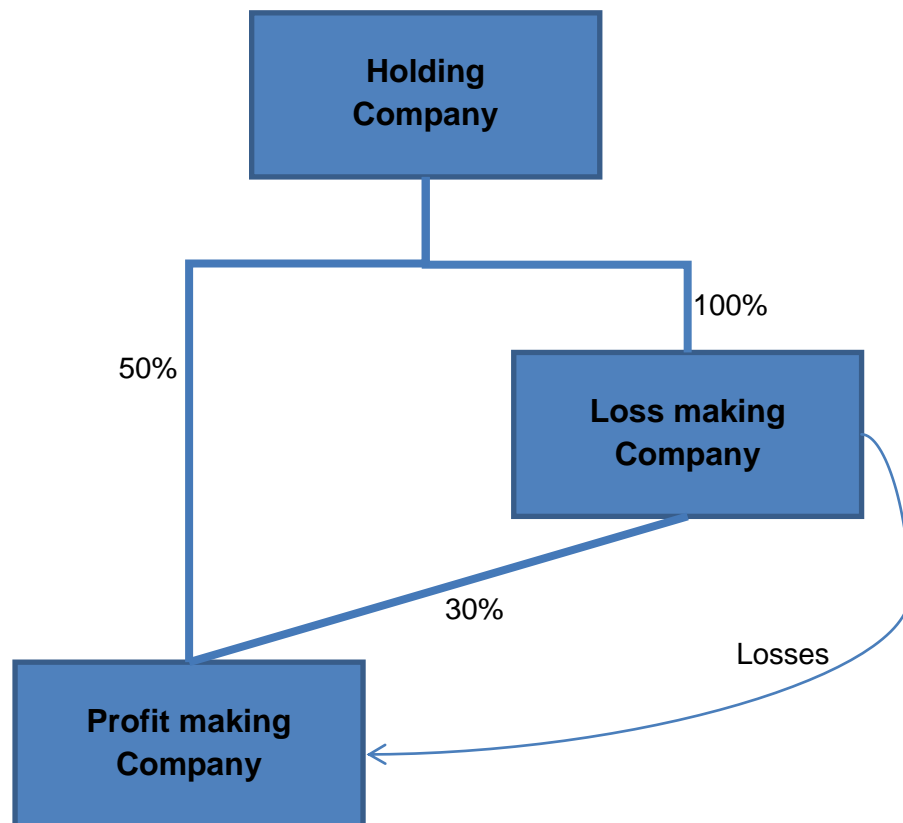


Example 4

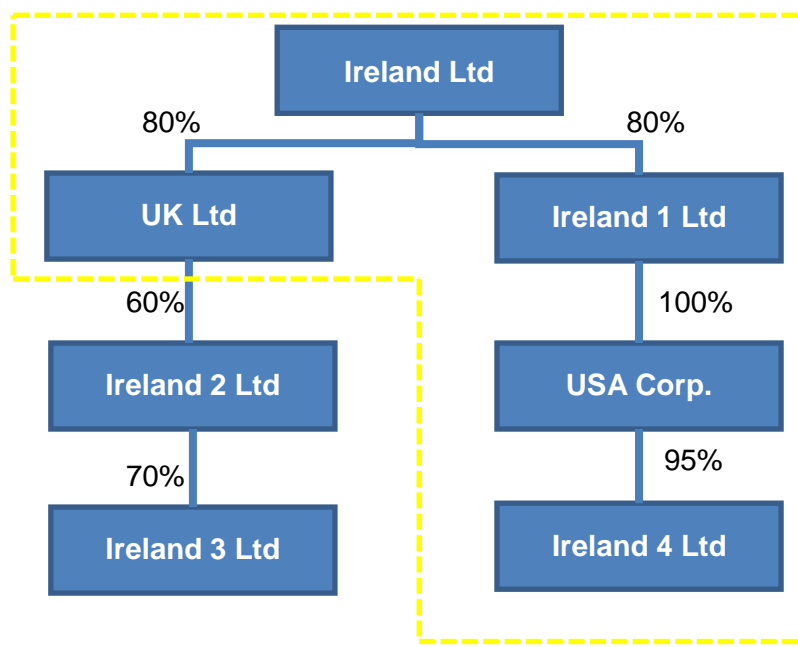


2. As stated above, a company may establish a 75% holding by aggregating any ordinary shares held directly in that company and also those held indirectly through a third company.

Example 5 – Corporation tax group via indirect shareholding



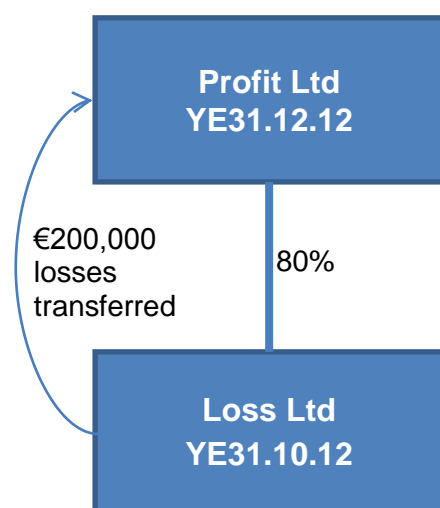
Example 6 – Corporation tax group via indirect shareholdings in non-Irish companies



The corporation tax loss group consists of Ireland Ltd, UK Ltd, Ireland 1 Ltd, USA Corp. and Ireland 4 Ltd.

3. Full group relief for losses is only available where the accounting period for the loss making company and the profit making group company/companies are coterminous. Where the accounting periods of the group companies only correspond partly, then the group relief available is restricted on a time apportioned basis.

Example 7 – Group companies with different accounting year ends



In the year ended 31 October 2012, Loss Ltd incurred a trading loss of €240,000.

In the year ended 31 December 2012, Profit Ltd made a trading profit of €360,000.

The corresponding accounting period is the period 1 January 2012 to 31 October 2012. Therefore, the maximum amount of group relief available is the lesser of:

- Profit of €360,000 x 10/12 = €300,000
- Loss of €240,000 x 10/12 = €200,000

Profit Ltd can make a group relief claim to utilise €200,000 of Loss Ltd's current year trading losses.

4. Where a new company joins a group or where a company leaves a corporation tax group, all the companies in the group are deemed to end an accounting period at the date of change for the purpose of establishing the amount of any group relief due.
5. Trading losses incurred by non-Irish subsidiaries can be group relieved to an Irish parent company provided the subsidiary is resident in an EU member state or an EEA member state with which Ireland has signed a double taxation agreement. It must be shown that the loss being surrendered to the Irish parent company cannot be utilised in any other way by the foreign subsidiary.
6. The company claiming the group loss must lodge a formal claim to avail of group relief from its loss making group member within two years of the end of the loss making company's accounting period. The loss making company must also give formal consent in respect of the surrender of its loss.

Example 8

Assume the same facts as example 7. Profit Ltd will have to make a claim for the group losses from Loss Ltd on or before 31 October 2014.

7. Where the group company claiming the loss pays the company that is surrendering the loss for the use of the loss, the payment will not be taken into account in computing the profits or losses of either company. That is, it is not taxable as income or deductible as an expense.

What is a consortium for corporation tax purposes?

Where the 75% relationship test, required for group loss relief, is not met consortium loss relief may be available.

A company will be owned by a consortium for corporation tax purposes if:

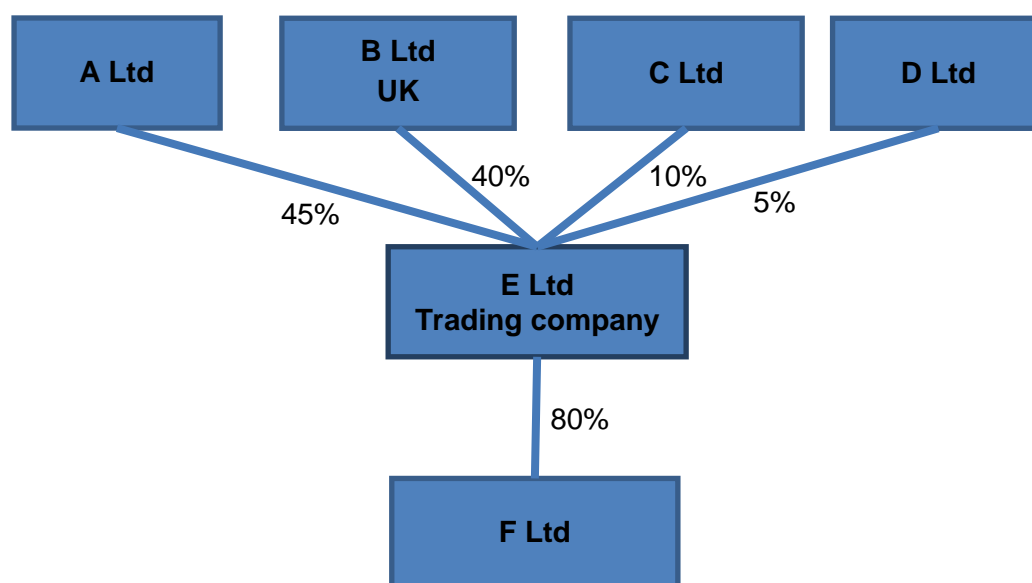
- at least 75% of its ordinary share capital is owned by five or fewer companies and
- all of which are resident in the EU or in an EEA country with which Ireland has signed a double taxation agreement.

Relief for a relevant trading loss is available where the claimant company is a member of a consortium and the surrendering company is:

- a trading company owned by a consortium or
- a trading company which is a 90% subsidiary of a holding company owned by a consortium or
- a holding company owned by a consortium.

It is important to note that the loss relief entitlement of a consortium member company is limited to its percentage holding in the surrendering company.

Example 9



E Ltd is a consortium trading company and so it can surrender:

- 45% of its losses to A Ltd
- 10% of its losses to C Ltd
- 5% of its losses to D Ltd
- As B Ltd is a UK resident company, no losses can be surrendered to it by E Ltd

If B Ltd had been resident in Australia, for example, a qualifying consortium would not exist as only 60% of the shares in E Ltd would be controlled by companies resident in the EU or EEA Double Taxation Agreement countries.

As E Ltd and F Ltd form a 75% group for corporation tax loss relief purposes, E Ltd can surrender losses to F Ltd and vice versa. As F Ltd is not a 90% subsidiary of E Ltd, it will not be able to surrender any losses to members of the consortium (i.e. A Ltd, C Ltd and D Ltd).