

## CHAPTER 18

### GROUP RELIEF - FURTHER ASPECTS

#### 18.1 Maximum relief

It is important to remember that group relief is a current year relief only. The maximum relief that can flow from one company to another 75% company is the lower of the available loss of the surrendering company and the available profit of the claimant company.

Y/e 31.12.10



The maximum group relief claim between the two companies is going to be the lower of the available loss of (£120,000) or the available profit of £90,000.

The companies here can therefore specify a claim up to a maximum amount of £90,000.

#### 18.2 Non-coterminous accounting periods

[CTA 2010,  
s.139](#)

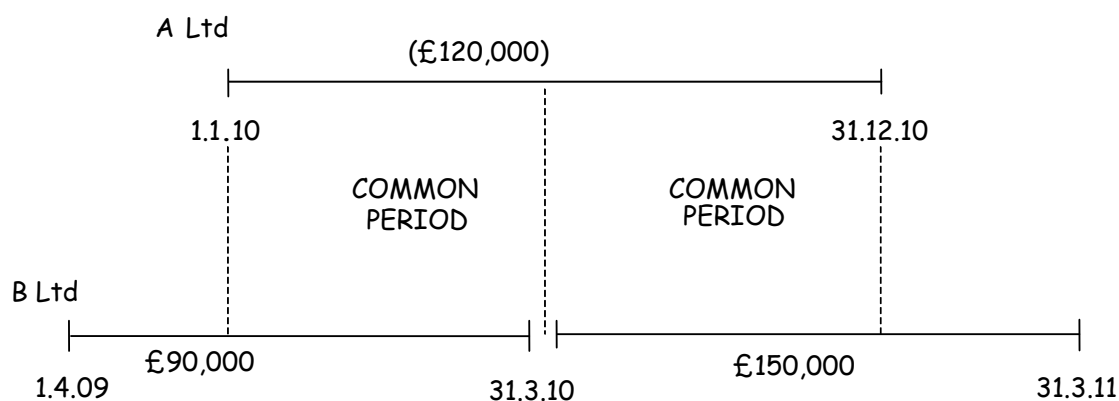
Where group companies have different chargeable accounting period ends the losses and profits must be time apportioned accordingly.

[CTA 2010,  
s.140](#)

If A Ltd has a December year end and B Ltd has a March year end, group relief is only possible for the common periods.

[CTA 2010,  
s.142](#)

The loss set off is the lower of the common profit and the common loss.



First common period (1.1.10 - 31.3.10) - 3 months

The group relief available is the lower of:

$$\text{Common loss } \frac{3}{12} \times (£120,000) = (£30,000)$$

$$\text{Common profit } \frac{3}{12} \times £90,000 = £22,500$$

Maximum claim = **£22,500**

Second common period (1.4.10 - 31.12.10) - 9 months

The group relief available is the lower of:

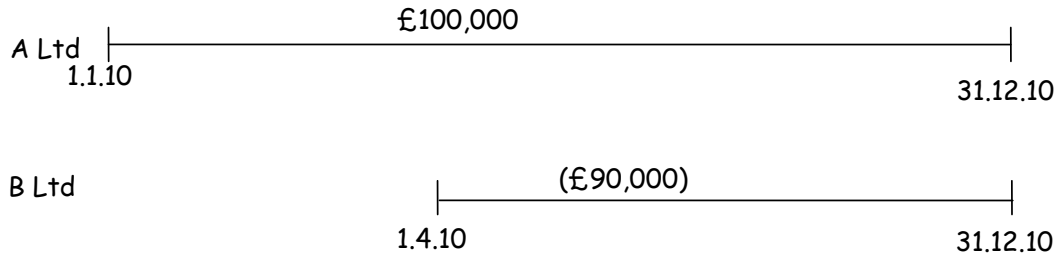
$$\text{Common loss } \frac{9}{12} \times (£120,000) = (£90,000)$$

$$\text{Common profit } \frac{9}{12} \times £150,000 = £112,500$$

Maximum claim = **£90,000**

### 18.3 Short accounting periods

Again time apportionment applies where either company has a short chargeable accounting period.



The group relief available is the lower of:

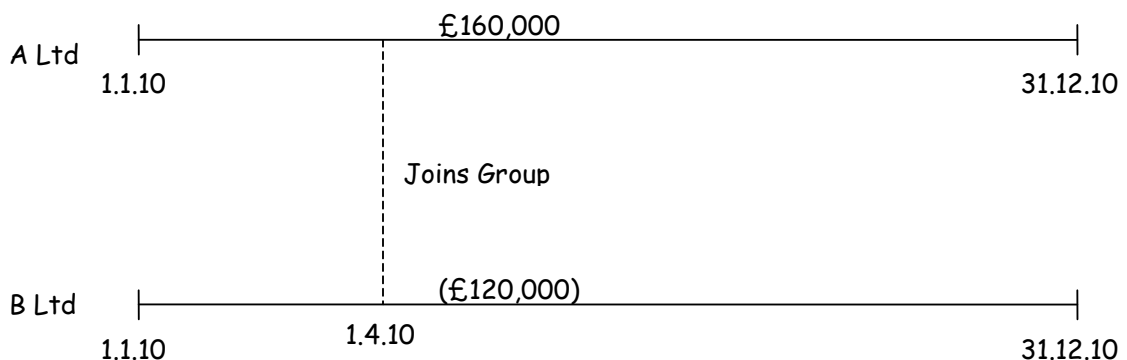
$$\text{Common loss } \pounds(90,000) \times \frac{9}{9} = \pounds(90,000)$$

$$\text{Common profit } \pounds100,000 \times \frac{9}{12} = \pounds75,000$$

Maximum claim = **£75,000**

### 18.4 Company joining a group

A company joins a group when 75% of its ownership is transferred to that new group. If this occurs part way through a chargeable accounting period time apportionment rules apply. Only losses made after the company joined the group can be group relieved.



A Ltd acquired B Ltd on 1 April 2010. The group relief available is the lower of:

$$\text{Profit after group relationship began } \pounds160,000 \times \frac{9}{12} = \pounds120,000$$

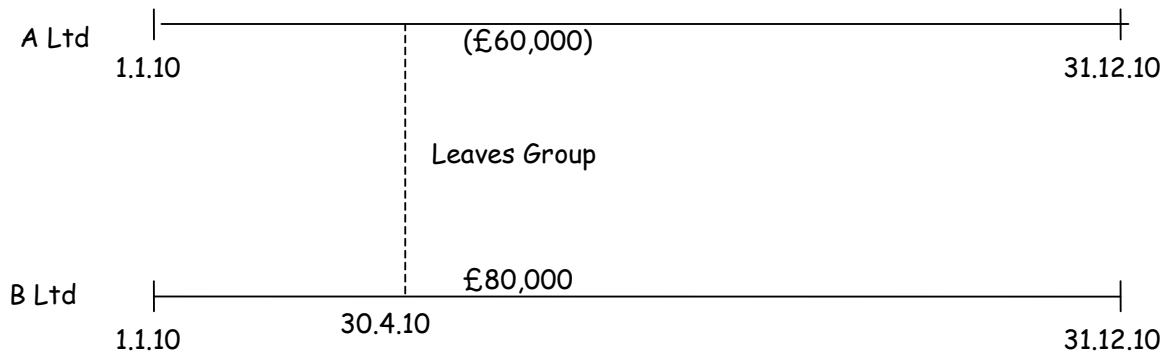
$$\text{Loss after group relationship began } \pounds(120,000) \times \frac{9}{12} = \pounds(90,000)$$

Maximum claim = **£90,000**

### 18.5 Company leaving a group

A company leaves a group when **arrangements come into force to sell the shares** in it. This was established in the case of *Shepherd v Law Land Plc* in 1990.

Again time apportionment will apply.



Arrangements for A Ltd to sell B Ltd come into force on 30 April 2010.

The group relief available is the lower of:

$$\text{Loss until arrangements for sale } (£60,000) \times \frac{4}{12} = £(20,000)$$

$$\text{Profit until arrangements for sale } £80,000 \times \frac{4}{12} = £26,667$$

Maximum claim = **£20,000**

SP3/93 gives some guidance on when "arrangements" come into force.

The statement begins by saying that it is not possible to give comprehensive guidance as each case will depend on the facts.

Where there is a straightforward negotiation for the disposal of shares arrangements will not normally come into force until an offer is accepted **subject to contract**.

Where the disposal requires the **approval of shareholders**, arrangements will not come into force until that approval is given.

Following negotiations with several purchasers concentrating on one potential purchaser does not in itself lead to arrangements, however arrangements can exist even though they are not enforceable.

### 18.6 Buying and selling subsidiaries

Z Ltd has a year end of 31 December 2010 and it makes a loss of £120,000.

On 30 April 2010, a contract is agreed for the sale of Z Ltd by the X plc group. This is the date the arrangements for sale came into force, therefore the maximum amount of loss which is available to the X plc group is:

$$\frac{4}{12} \times 120,000 = \text{£}40,000$$

On 1 July 2010, Z Ltd joins the Y plc group, this being the date that the shares are actually transferred, therefore the maximum flow of losses to the Y plc group will be:

$$\frac{6}{12} \times 120,000 = \text{£}60,000$$

**No losses could flow** to either group in the 2 months between 30 April and 1 July. This was basically the time between the **arrangements coming into force and the binding contract of sale** i.e. the actual transfer of the company's shares. This is very similar to the period between exchange and completion when buying a property and therefore this time should be minimised in practice to ensure that valuable group relief is not disappearing in that "hole" between exchange and completion.

### 18.7 Alternative to time apportionment

[CTA 2010, s.141\(3\)](#)

Profits and losses must be apportioned on a just and reasonable basis which is usually **time apportionment**. However, we may need to restrict amounts if this appears to be unreasonable to either the company or HMRC.

Assume we have a company with a year end of 31 December 2010 and a trade profit of £120,000. On 1 February 2010 it sells a property and realises a capital gain of £100,000.

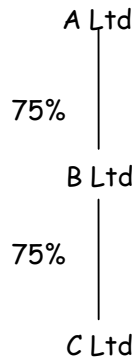
On 1 July 2010 it joins a group.

The group relief period will be from 1 July to the end of the year, which is 6 months, but HMRC will only accept 6/12ths of £120,000 = £60,000 as group relief, not 6/12ths of the total profits of £220,000 including the gain.

The reason HMRC will want to **exclude the gain** is because the asset that has been sold has **nothing to do with the group**. It seems wrong that losses from the group can come across and shelter part of a capital gain on an asset which has been sold before it even joined the group.

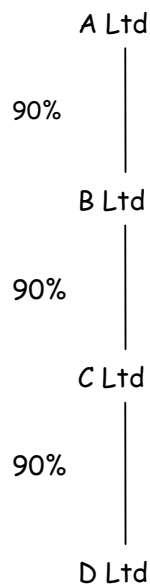
### 18.8 Sub-subsidiaries

When looking at the group relief definition, we look at 75%. This applies both **directly and indirectly**, so is particularly important when we look at sub-subsidiaries.



Group relief can flow between A and B, because of the 75% relationship and, indeed, between B and C. However, losses cannot flow between A and C, because A only has a 56.25% stake in C, i.e. 75% of 75%. So here, for group relief purposes, A and B form a group and B and C form a separate group.

Consider the following:



A owns 90% of B so therefore a loss of A could be transferred to B.

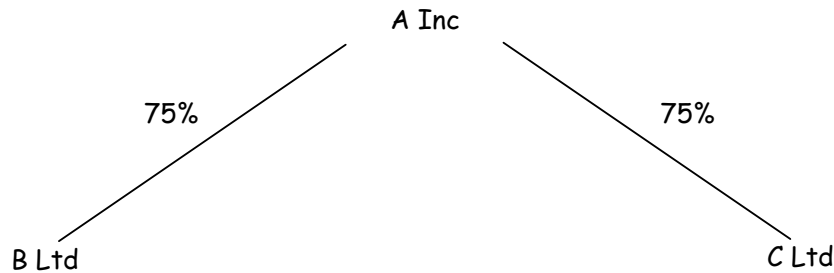
A owns 81% of C (90% of 90%) and as this is again above 75%, a loss of A could be transferred C.

However, A only owns 72.9% of D (90% of 81%), and that is below 75%, so therefore a loss of A could not be transferred to D and vice versa.

So here, for group relief purposes, A, B and C form one group and B, C and D form a separate group.

### 18.9 Worldwide groups

Groups can include all companies whether UK resident or not.



Losses can be transferred between B Ltd and C Ltd.

Note that losses cannot flow between A Inc and B Ltd, in other words a **loss of a foreign company cannot be transferred and relieved in the UK**, and vice versa.

### 18.10 Overseas losses of non resident companies

[CTA 2010, s.111-128](#)

Following a successful challenge to the group relief rules by Marks and Spencer at the ECJ, where rules were introduced to **allow claims for losses incurred by European Economic Area (EEA) subsidiaries in certain cases**.

These rules apply to accounting periods **beginning on or after 1 April 2006** with apportionment where an accounting period crosses this date.

Anti avoidance legislation relating to these losses was also introduced from 20 February 2006. Losses will not be available where the amount would not qualify for group relief but for any relevant arrangements, or the amount would not have arisen to the non resident company but for any relevant arrangements and the main purpose, or one of the main purposes, of the relevant arrangements was to secure that the amount would qualify for group relief.

[CTA 2010, s.127](#)

To qualify for the relief the surrendering company must be chargeable to tax under the law of an EEA state.

Relief will be available where either:

- (i) the surrendering company is a 75% subsidiary of the claimant company and the claimant company is resident in the United Kingdom, or
- (ii) both the surrendering company and the claimant company are 75% subsidiaries of a third company that is resident in the United Kingdom.

- The losses to be surrendered must meet the following conditions [CTA 2010, s.113](#)
- (a) the **equivalence condition**; it is a type of loss eligible for group relief; [CTA 2010, s.114](#)
  - (b) the **EEA tax loss condition**; a loss arises under the laws of the EEA state; [CTA 2010, s.115](#)  
[CTA 2010, s.116](#)
  - (c) the **qualifying loss condition**; the loss cannot be used in current, past or future accounting periods by the company or a third party; and [CTA 2010, s.117-119](#)
  - (d) the **precedence condition**; losses are to be used first by intermediate holding companies in other member states. [CTA 2010, s.121](#)

Once it has been established that a loss exists under the above conditions it must be **re-computed using UK rules**.

The maximum loss that can be surrendered is the EEA loss. If re-computing the loss gives an income figure then no loss can be claimed. If a lower loss results, this is the maximum that can be claimed.

With regard to (c) above, the rules require that the loss cannot be taken into account in calculating any profits, income or gains which arise to the company or any other person in the current period or any previous period, and are chargeable to tax for the current period or any previous period. In addition they require that the amount of loss cannot be relieved in the current period or any previous period by the payment of a credit, by the elimination or reduction of a tax liability, or by any other means of any kind.

All steps must be taken to claim all relief available.

In looking at the precedence condition in (d) above it is only necessary to consider intermediate holding companies where there is a 75% link.

To recalculate the loss under UK rules certain assumptions have to be made about the residency of the company and its sources of income. [CTA 2010, s.123](#)

The company is treated as UK resident from the start of the loss making accounting period. A deemed accounting period begins at the start of the loss making period. Trading income is treated as trade profit. For Capital Allowances purposes, it is assumed that the plant or machinery was provided for purposes wholly other than those of the activity and was not brought into use for the purposes of the activity until the beginning of the loss period, and section 13 of the Capital Allowances Act (use for qualifying activity of plant or machinery provided for other purposes) will apply.



**Illustration 1**

If we assume there are no differences between UK and foreign measures of income and expenditure.

**Foreign computation:**

	£
Trading loss	(350)
Non-trade interest	(150)
Other income	<u>125</u>
Unrelievable foreign loss	£(375)

**UK recomputation:**

	£
Trading loss	(350)
Non-trading deficit (LR)	(150)
UK rules loss available for group relief	<u>500</u>
Other income	<u>£125</u>

A UK company could choose to surrender all £500 as group relief, leaving £125 of other income within the charge to tax.

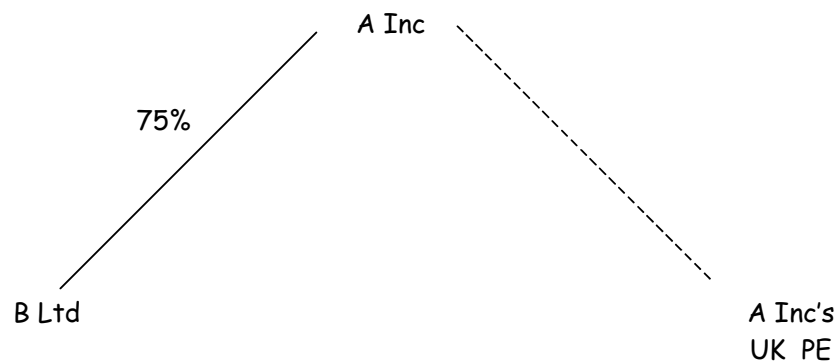
Under the EEA loss rules, a loss only meets the qualifying loss condition to the extent that relief cannot be given for any period.

In the EEA territory £125 of either the foreign trading loss or the foreign non-trading (LR) deficit has been relieved against the other foreign income. This amount does not meet the qualifying loss condition and therefore the amount available for relief in the UK is £375.

**18.11 Non resident companies**

[CTA 2010, s.107](#)

Losses may be transferred to **UK Permanent Establishments ("PE") of foreign owned companies**, by a fellow 75% UK subsidiary and vice versa.



The losses of A Inc's UK PE can be surrendered to B Ltd to the extent that:

- (a) If a profit had arisen in the UK PE it **would have been subject to UK corporation tax and would not be exempt under a double tax treaty;**  
and
- (b) No part of the loss is relievably or allowable, in any period, against non-UK profits of any person for the purposes of any foreign tax.

The effect is that the loss of the UK PE is treated as relievably in the foreign territory in preference to the UK. Therefore, only when there is no relief abroad, can the loss then be transferred to B Ltd, under the group relief regime.

The UK PE can make a group relief claim to the extent it has **taxable total profits in the UK**.

### 18.12 Overseas PE

[CTA 2010,  
s.106](#)

Where a UK resident company has an overseas PE it can surrender losses provided they are not otherwise deductible or allowable against non-UK profits of a person other than the company.

**Example 1**

Elbow Ltd owns 100% of the share capital of Patella Ltd. Both companies draw accounts annually to 30 June.

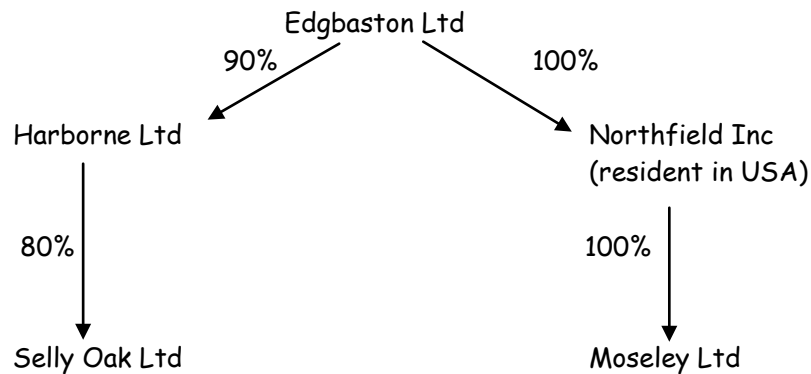
On 1 December 2009, Elbow Ltd accepted an offer from Mr Ankle (a UK resident entrepreneur) for the shares in Patella Ltd. The sale was completed on 1 January 2010.

Results for the 2 companies are as follows:

	Year ended 30 June 2010
Elbow Ltd	£ 90,000
Patella Ltd	(72,000)

**The maximum loss that Elbow Ltd can claim from Patella Ltd for the period is:**

- a) £30,000
- b) £36,000
- c) £37,500
- d) £72,000

**Example 2**

All companies draw accounts to 31 December. On 1 November 2010, Edgbaston Ltd bought all of the share capital of Weoley Castle Ltd, a UK manufacturing company. Weoley Castle Ltd draws accounts to 31 March.

All companies make substantial profits with the exception of Weoley Castle Ltd which made the following trade losses:

	£
Year ended 31 March 2010	(50,000)
Year ended 31 March 2011	(120,000)

**You are required to:**

- (i) Identify the relevant corporation tax limits for Edgbaston Ltd for its year ended 31 December 2010;
- (ii) Identify the companies to whom Weoley Castle Ltd is able to surrender all or part of its trading losses;
- (iii) Assuming Weoley Castle Ltd will surrender losses to Edgbaston Ltd, calculate the maximum amount of the loss which can be claimed by Edgbaston Ltd against its profits for the year ended 31 December 2010.

**Answer 1**

A

"Arrangements" for sale came into effect on 1 December 2009.

No losses may be claimed/surrendered after this date.

The group relief is therefore the lower of:

$$(i) \quad \frac{5}{12} \times \text{£}90,000 = \underline{\text{£}37,500}$$

$$(ii) \quad \frac{5}{12} \times (72,000) = \underline{\text{£}(30,000)}$$

i.e. £30,000 can be surrendered by Patella Ltd to Elbow Ltd

**Answer 2**

- (i) All 6 companies in the group are "associated".

We include overseas companies and companies associated for part of the accounting period. The corporation tax limits will therefore be:

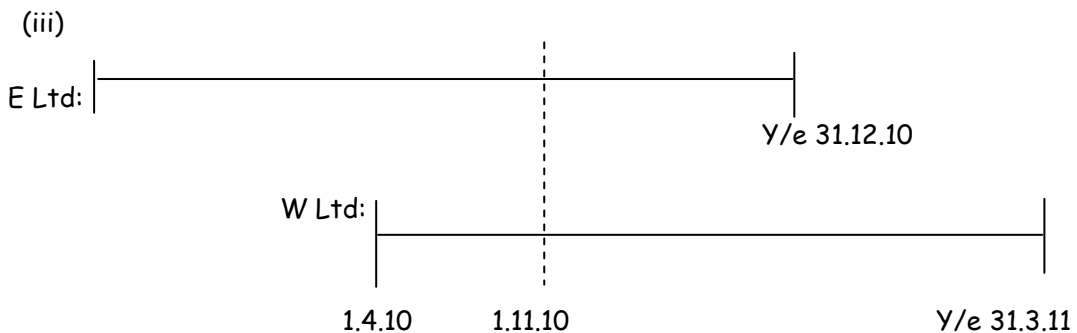
Upper limit	$1,500,000 \div 6$	= 250,000
Lower limit	$300,000 \div 6$	= 50,000

- (ii) Weoley Castle Ltd may surrender losses to:

Edgbaston Ltd + Harborne Ltd + Moseley Ltd

A group can be established by using Northfield Inc (even though it is not UK resident). However, losses cannot be surrendered to or claimed from an overseas company unless it has a UK permanent establishment (i.e. branch).

Selly Oak Ltd is effectively only 72% owned by Edgbaston Ltd so it is not part of a group relief group.



The common period is 1.11.10 to 31.12.10 (i.e. 2 months)

Losses before joining the group cannot be surrendered.

The maximum loss which may be claimed by Edgbaston Ltd for the year ended 31 December 2010 is therefore:

$$\frac{2}{12} \times \pounds(120,000) = \underline{\pounds(20,000)}$$

Subject to Edgbaston Ltd, having profits  $\times \frac{2}{12}$ , sufficient to relieve this loss.

Note:  $\frac{3}{12} \times \pounds(120,000) = \pounds(30,000)$  can be claimed by Edgbaston Ltd in the next period (i.e. y/e 31.12.11), again subject to having sufficient profit available.