CHAPTER 25

CHANGE IN OWNERSHIP OF A COMPANY

25.1 Introduction

Anti-avoidance rules exist to **prevent companies carrying forward trading losses where there has been a change in ownership** and the new owner has effectively bought the company because it wants to utilise the losses brought forward.

CTA 2010, s.673

Similar rules apply to UK property business losses.

CTA 2010, s.683

25.2 The reason for the anti-avoidance provisions

The Jones family currently own 100% of a company called Target Limited. Target Limited currently makes reproduction antique furniture. It has corporation tax losses brought forward, which may be carried forward under the provisions of s.45 CTA 2010, against future profits of the same trade.

As it is unlikely that this trade is going to make any profits in the future, the losses may be of no particular use to Target Limited. So, Big Plc which is a furniture retailer, is interested in buying Target Limited in order to "acquire" these losses. Big Plc offer cash to the Jones family, in return for the shares in Target, such that the Big Plc now takes over 100% ownership of Target Limited.

Big Plc may make changes to Target Limited's trade, for example it may start to produce modern furniture, specifically ordered by Big Plc's own customers such that they will have a ready market for the goods. Once Target Limited starts to make profits, they would want to bring forward the unused losses in order to save corporation tax on those profits.

The anti-avoidance rules were introduced to stop this particular scheme. If HMRC consider that there has been a "major change in nature or conduct of the trade," they will not allow the losses to be brought forward.

25.3 Major change in nature or conduct of trade

CTA 2010, s.673

The period under review will be the 3 years leading up to and the 3 years that immediately follow the change in ownership. No **major change in the nature or conduct of the trade** must have happened in that 6 year total period.

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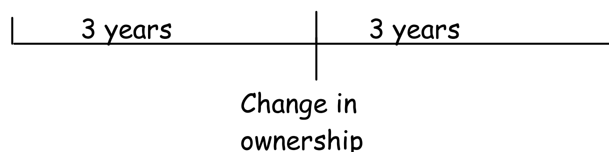


The changes that take place to the trade may happen piecemeal and it can be a gradual process that began outside the period of three years, but if at any point in the **3 years before**, and at any point in the **3 years after**, the cumulative changes have triggered a **"major change"** then the **anti avoidance provisions will apply**.

CTA 2010, s.673(4) defines a major change as "a major change in the property, services or facilities dealt in."

In the example that we just looked at, Target Limited used to make reproduction furniture and it now makes modern furniture. That could be a major change in the type of property dealt in.

Section 673 also mentions "a major change in customers, outlets and markets".

In the example, Target Limited sells its furniture to the public at large, but following the change in ownership will only supply Big Plc's customers, so there is a change in the customers, the outlet and the markets. This could be seen as a major change.

HMRC have always said that they will look at the facts and degree in each individual case, and this has always been the approach taken by the courts.

In the case of ***Purchase v Tesco (1984),*** it was held that the change must be "more than significant, but not necessarily fundamental" to trigger a major change. The HMRC's view on the ***Purchase v Tesco*** case is given in **SP 10/91**.

25.4 Small or negligible trades

CTA 2010, s.673(3)

The anti-avoidance rules will **also apply** where the **trade was small or negligible, immediately before the change in ownership**, and, it is **followed by** a **considerable revival** in any period following the change in ownership.

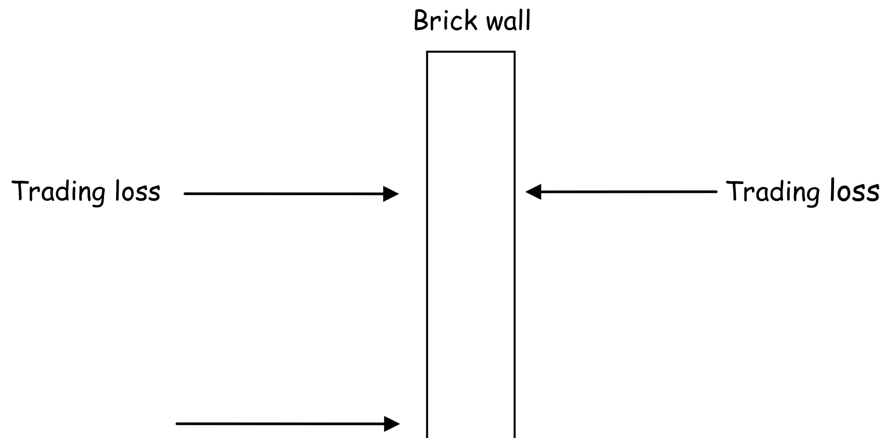
This provision is not confined to 3 years, unlike a major change in nature or conduct of trade. The reason for this provision's existence is simply to stop a company buying another company, not because it wants its trade, but because it wants its losses, i.e. the trade is so small, it can't really be seen that anybody would want to buy it, but they are very interested in using up the losses brought forward.

25.5 Effect of the anti-avoidance provisions

A "brick wall" is put up at the date of the change of ownership which **blocks trading losses from being carried forward after the date of the change in ownership**.

CTA 2010, s.674

The mirror effect of these provisions is that **any losses made after the change in ownership cannot be carried back** and set against pre change in ownership profits.



25.6 Change in ownership

If within a period of 3 years **a single person acquires more than 50%** of the share capital of the company, **or 2 or more persons acquire at least 5% each** and taken **together,** this **exceeds 50%,** then there has been a **change in ownership**. In other words, more than half of the company's shares change hands in a 3 year period, to one single person or to a number of people, each owning at least 5%.

CTA 2010, s.719

Similar rules apply to the carry forward of management expenses, losses from a UK property business, non trade debits on loan relationships and non trading losses on Intangible Fixed Assets.

25.7 Statement of Practice 10/91

SP 10/91 gives guidance to companies as to what they can do to a trade without it being considered a "major change". If a company buys another company, which is loss making, it is bound to want to make some changes to that trade, in order to bring it into profit. Therefore HMRC have given us guidance on the sort of **changes a company can make in that first 3 year period.**

These are:

SP 10/91 Paras 7& 8

- changes to keep pace with **new technology**

- the adoption of **new management techniques**
- improvements in **efficiency of the company**, (including certain redundancies)
- **rationalisation** (including the dropping of unprofitable product lines).

In other words, the HMRC will let companies make changes that an ordinary prudent businessman should have made, in order to turn the trade into profit. Where the changes go beyond that, this is where the anti-avoidance provisions will apply, as the trade is so unrecognisable, that the losses cannot be brought forward, as it is not effectively the same trade.

25.8 Change in ownership of a company with investment business

CTA 2010, s.677

CTA 2010, s.682

There may be a restriction on the carry forward of surplus management expenses where there is a change of ownership of a company with investment business. The rules are similar but not identical to the rules restricting carry forward of trading losses. We will look at them in detail in the chapter on companies with investment business.

25.9 Restriction of loan relationship debits and non-trading deficits

CTA 2010, s.679

CTA 2010, s.680

Where there has been a change in the ownership of a company with investment business resulting in a restriction of carry forward of management expenses there is also a restriction on the amount of loan relationship debits and non-trading deficits which can be deducted for periods after the change.

25.10 Non-trading loss on intangible fixed assets

CTA 2010, s.681

Where there is a change of ownership of a company with an investment business there is a restriction on the carry forward of unused non-trading losses on IFAs.