

BUSINESS TAX

93. Class 4 NIC and trading losses

Have your clients overpaid Class 4 NIC? Or more importantly, have they not obtained a repayment to which they may be entitled? The comments below are written with farming clients in mind but could apply to any business clients.

Class 4 NIC rates increased in 2011 and this helps highlight the planning opportunity for the offset of trading losses against income liable to Class 4 NIC. The rules for offsetting losses for income tax and for NIC are not the same.

It should be noted that the Class 4 and trading loss interaction is something that not all software packages charged with the task of producing tax returns identify. It is therefore worthwhile checking all loss-making clients with Class 4 liability.

A repayment can arise when the taxpayer has claimed tax loss relief against non-trading income or capital gains. Losses not used for Class 4 NIC purposes are carried forward and used against the first available profits liable to Class 4 from the same trade as mirrored in the loss provision for income tax.

The losses available to set off for Class 4 purposes only are deducted on the tax return Self-employment (full) pages at box 101. Those taxpayers who would otherwise complete the Self-employment (short) pages are unable to do so if they wish to claim this relief as there is no similar box on the short Self-employment pages.

A loss memorandum must be kept of unused losses to be carried forward against future farming profits and also of how losses have been used against Class 4 liabilities. It can be argued that many advisers find it difficult controlling how farm losses have been utilised for farm income tax purposes, let alone Class 4 NIC. A note of how Class 4 losses have been utilised should be made in the additional information box on the tax return to keep HMRC informed.

The increased cost of Class 4 NIC may push many diversified farming activities into setting up a limited liability company, where the profits are taken by way of a dividend. This is now even more attractive following the reduction in the small companies' rate of corporation tax from 21% to 20%.

Editor's note: The loss relief rules for tax credits are different again, compared to income tax or National Insurance, and may require taxpayers or their advisers to keep a third loss memorandum. See *TAXline Tax Practice 25*.

TAXline MAY 2011