

**FROM:** Head of Taxation Department  
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**REFERENCE:** TAX/MCM/ln/Y2817  
**SUBJECT:** **US TAX LOSSES: 2001 CALENDAR YEAR ONWARDS**  
**ACTION POINTS:** Corporate members to notify MSU if they wish to carry 2001 and later US tax losses back to earlier years. Individual members and Scottish Limited Partnerships to notify MSU if they wish to carry them forward.  
**DEADLINE:** 20 September 2002

## **1. Introduction**

1.1 Up until now the filing of the US first level tax return has incorporated an automatic carry back of members' US net operating losses (NOLs) against their profits of earlier periods. For corporate members this filing procedure will change for losses of calendar years 2001 and later. All corporate members' NOLs for these years will automatically be carried forward for first level tax purposes unless the member notifies Lloyd's Members' Services Unit (MSU) that it wants them carried back. There will, however, still be an automatic carry back for individual members and for Scottish Limited Partnerships.

## **2. US "first level tax": returns and losses**

2.1 Lloyd's members are subject to US federal income tax on income that is deemed to be effectively connected with the United States. The taxation of this income is governed by US tax law and the Closing Agreements that Lloyd's has entered into with the US tax authorities. All members give a power of attorney to enable Messrs LeBoeuf, Lamb, Greene & MacRae (LeBoeufs) to deal with US tax matters on their behalf, including submitting first level tax returns.

- 2.2 US law provides that, where a taxpayer has a NOL for a year, the loss may be carried back and set against the income of the 2 preceding years, taking the earlier year first. Any unused NOL may be carried forward against future income for up to 20 years. The taxpayer may elect to forego the carry back, in which case the NOL may be carried forward instead.
- 2.3 Following the World Trade Center attack, the carry back period has been extended to 5 years for NOLs of 2001 and 2002. Taxpayers may elect to forego the 5-year carry back period and use the 2-year carry back, or also elect to forego the 2-year carry back, in which case any NOLs are carried forward against future income.
- 2.4 The election not to carry back a NOL must be made when the tax return for the year of loss is filed. The election is an annual one and cannot be changed once it has been made.

### **3. Effect of US loss relief on UK tax**

- 3.1 As members can claim double taxation relief against UK tax for US tax paid, any repayment of US tax following a loss carry back may result in further UK tax being payable.
- 3.2 For individual members double taxation relief is dealt with in a pragmatic way. The Lloyd's Underwriters (Double Taxation Relief) Regulations 1997 (SI 1997/405) provide a simple way of giving relief and also specify that any repayment is taken into account in the UK tax year in which the member receives the repayment.
- 3.3 These rules do not, however, apply to corporate members. As a result, a carry back of US tax losses may require the UK tax position for the earlier years to be revised, which may result both in additional administrative costs and in interest charges on the corporate member. For example, if a US loss of calendar year 2000 is carried back to calendar year 1998, this may require the revision of the UK tax computations relating to the three years of account from 1996 to 1998. These are taxed in the UK as profits of the accounting periods ended 31 December 1999, 2000 and 2001. And any carry back from 2001 to 1996 under the new US legislation may require the revision of the UK computations for the periods ended 31 December 1997, 1998 and 1999.
- 3.4 In view of this, and because of the administrative complexities in allocating US tax calculated on an annual basis against UK profits calculated on a three-year basis, most corporate members are likely to benefit from electing to carry forward their NOLs for US tax purposes. It has therefore been decided that when making the US first level tax return filings for the calendar year 2001 onwards LeBoeufs will automatically include elections to forego the NOL carry backs for all corporate members unless any member specifically instructs them to carry back its NOLs. The following section explains how corporate members can make such an instruction.

### **4. Procedure for corporate members to opt out of loss carry forward**

- 4.1 For US first level tax losses of 2001 and later calendar years, the elections for corporate members to forego the carry back and to carry forward losses will automatically be made at the time the tax return is filed unless the corporate member instructs otherwise.

- 4.2 Corporate members that wish to carry losses back for US tax purposes should notify MSU by 30 September 2002 at the latest. For tax year 2001 these instructions must state whether the NOLs should be carried back 5 years or 2 years. Notification can initially be by email addressed to [Lloyds-Tax-Ops@lloyds.com](mailto:Lloyds-Tax-Ops@lloyds.com). The corporate member will then be sent a form confirming this election which must be signed and returned by 7 October 2002.
- 4.3 MSU cannot send all corporate members details of their 2001 US income or losses beforehand as a matter of course, nor is this likely to be cost efficient. We believe most members will be able to make their decision without this detailed information. However, MSU will provide estimates to members who request this information from them by 20 September 2002. MSU can also supply members with details of the amounts of US tax available to be reclaimed in each of the 5 preceding years. Please note that any requests should be addressed to Christine Allcott, and that a charge for the information will be made on a time and materials basis in accordance with the MSU price list.

## **5. Individual members and Scottish Limited Partnerships**

- 5.1 There will still be an automatic carry back of US net operating losses for individuals and Scottish Limited Partnerships. This is likely to be beneficial. Individual members and SLPs who want to continue to carry back US tax losses need therefore do nothing.
- 5.2 If, however, an individual member or SLP does wish to forego the carry back and only carry forward a US tax loss, they will now be able to do so. Such members should notify MSU by 30 September 2002 at the latest. Anyone who requires estimates of their US first level tax profit or loss for 2001, or details of the amounts of US tax available to be reclaimed in each of the 5 preceding years, should request this information from Christine Allcott by 20 September 2002. A charge will be made for this information on the same basis as for corporate members.

## **5. Readership and contact details**

- 5.1 This bulletin is being sent to underwriting agents, auditors and direct corporate members. It is also being sent to personal accountants and individual members who deal with their own tax affairs.
- 5.2 For any general queries, please contact: Maureen McLeod on 020 7327 6860 (email: [maureen.c.mcleod@lloyds.com](mailto:maureen.c.mcleod@lloyds.com)) or Roger Ramage on 020 7327 6852 (email: [roger.e.ramage@lloyds.com](mailto:roger.e.ramage@lloyds.com)).
- 5.3 For queries on how corporate members can opt to carry back losses or on how individual members or SLPs can elect to carry forward losses, please contact: Christine Allcott on 01634 392433 (email: [christine.a.allcott@lloyds.com](mailto:christine.a.allcott@lloyds.com)).