HMRC - CTM80330 - Groups: UK Permanent Establishment Of Non-Resident Company - Tax Relief In A Foreign Jurisdiction - Credit And Exemption Countries

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CTA10/S107(6)

For general guidance about the surrender as group relief of losses and other amounts (CTM80110) of a UK permanent establishment of a non-resident company see CTM80310.

CTA10/S107(6) is applicable to companies not resident in the European Economic Area (EEA), and for companies resident in the EEA prior to 1 April 2013.

Under CTA10/S107(6) there can be no surrender as group relief of a loss or other amount of a UK permanent establishment of a non-resident company if tax relief may be given in a foreign jurisdiction for any part of the loss, etc. (CTM80310).

In operating this rule it is relevant whether the foreign country operates a credit system or an exemption system for overseas permanent establishment income.

The UK offers both systems of relief (see INTM151040 and INTM281010).

Credit

Broadly, a credit system is one where the world income of residents in that state, including income of overseas permanent establishments, is subject to tax in the country of residence, and double taxation credit relief is given for the overseas tax paid on the permanent establishment income.

Where CTA10/S107(6) applies, companies in jurisdictions that operate a credit system in relation to UK permanent establishment income and which allow UK permanent establishment losses to reduce the companies’ total taxable profits, or to carry them forward for relief against future profits, will not generally be able to surrender the losses as group relief. For an exception to this, where it is clear that the permanent establishment losses can never be relieved in the foreign jurisdiction, see CTM80315.

Exemption

An exemption system is one where the country of residence exempts the income from overseas permanent establishments from tax.

Where CTA10/S107(6) applies, generally group relief is available where the company is resident in a jurisdiction that operates an exemption system. However this will not apply where:

the overseas jurisdiction allows consolidation of the losses of the UK permanent establishment with profits of a parent or other group members, or

the overseas jurisdiction gives relief for overseas permanent establishment losses, but that relief is subject to subsequent recoupment against future permanent establishment profits; no surrender of the losses as group relief is possible, even if the foreign jurisdiction later recoups the losses.

Some overseas jurisdictions give relief for UK permanent establishment losses only to the extent that they exceed non-taxable other income of the company. For instance, foreign permanent establishment losses may first have to be set off against non-taxable foreign permanent establishment income before any set-off is allowed against the company’s taxable profits. In such a case, where CTA10/S107(6) applies, whether the UK permanent establishment loss can be surrendered as group relief will depend on whether the UK permanent establishment loss exceeds the non-taxable other income of the company; if not, no part of that loss can be relieved against non-UK profits so the loss can be surrendered as group relief.

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