HMRC - CTM81220 - Order Of Set-Off

ICTA88/S240 (4)

A further rule applying to surrendered ACT is that the subsidiary company cannot make any claim, in respect of any ACT surrendered to it, to carry that ACT back under ICTA88/S239 (3). In determining whether, and to what extent, there exists surplus ACT for the purposes of Section 239 (3), the following order of set-off is applied. Where for any accounting period a subsidiary has available for set-off:

ACT paid in respect of its own distributions, and

ACT surrendered to it,

the surrendered amount is regarded as having been set-off against the subsidiary’s CT liability in priority to the ACT paid on its own distributions.

A similar order of set-off applies in determining whether any amount of surplus ACT brought forward to an accounting period includes an amount of ACT surrendered to the company. ACT surrendered to the company is again regarded as having been set-off against its liability to CT in priority to ACT paid by the company in respect of its own distributions. The point will be relevant if a company wants to carry back from an accounting period ACT brought forward to that period.

ICTA88/S240 (5)

Under ICTA88/S240 (5), a subsidiary which receives surrendered ACT cannot set that ACT against its CT liability for any accounting period (beginning before 6 April 1999) in which, or in any part of which, it is not a 51% subsidiary of the surrendering company.The effect of this is that any unused ACT is lost.

But the rule above does not apply for accounting periods ending on or after 14 March 1989 where there is a group reorganisation, and both the surrendering and receiving companies remain 51% subsidiaries of a third company. This intra-group saving provision was enacted to assist commercially desirable reorganisations.

However the protection it provides is lost if ICTA88/S245A applies. ICTA88/S245A restricts the set-off of surrendered ACT in certain circumstances, and there is guidance on this at CTM81225.

The circumstances in which Section 245A operates are where:

there is a major change in the nature or conduct of the surrendering company’s trade or business, and

the receiving company was not a 75% subsidiary of the third company when it was transferred within the group (CTM06350).

This order of set-off is also important where a company has carried back ACT from a later period and subsequently receives surrendered ACT. (Remember, a surrender claim canbe made up to six years after the end of an accounting period but the carry back claim must be made within two.) In that case, the surrendered ACT displaces the ACT previously carried back. That displaced ACT reverts to being surplus ACT for the year in which itarose (see CTM20170).

Example

Company L is a subsidiary company and prepares accounts for the years ended 31 October 1991 and 31 October 1992. Its CT is as follows:

Year ended 31 October 1991, £4,000.

Year ended 31 October 1992, £12,000.

For the year ended 31 October 1992 it pays ACT of £5,000, and receives the benefit of£11,000 ACT surrendered by its parent company. Company L wants to set off all the ACT to reduce the CT for both years to nil. The order of set-off for the year ended 31 October1992 is:

(If the ACT paid were set off in priority, then there would be surplus ACT surrendered to the company of £4,000. Company L could not carry that ACT back to 1991, and so it would not be able to reduce the CT for both 1991 and 1992 to nil.)

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