HMRC - CTM81225 - Change Of Ownership: ACT Previously Surrendered

ICTA88/S245A

ICTA88/S240 (5) (CTM81220) prevents surrendered ACT being set against a subsidiary’s CT liability for any accounting period in which it is not a 51% subsidiary of the surrendering company. This does not apply for accounting periods ending on or after 14 March 1989 where both companies remain 51% subsidiaries of a third company.

ICTA88/S245 (CTM20300) prevents surrendered ACT from being carried forward and set against CT liability for any later accounting period if there is:

a change of ownership of the receiving company as defined in ICTA88/S769 (CTM06350),

and

a major change in the nature or conduct of that company’s trade or business within three years of the change of ownership (or the trade or business activities have become small or negligible and have not revived before the change of ownership).

To summarise ICTA88/S245A applies to changes of ownership occurring on or after 14 March 1989 and prior to 6 April 1999. It prevents ACT surrendered to a company in respect of a distribution before the change of ownership from being carried forward and set against the CT liability for any later accounting period after the change of ownership where the following conditions apply:

there is a change of ownership as defined in ICTA88/S769 of both the surrendering company and the receiving company,

or

there is a change of ownership as defined in ICTA88/S769 of the receiving company alone,

and

there is a major change in the nature or conduct of the trade or business of the surrendering company within six years beginning three years before the ownership change.

To summarise ICTA88/S245A applies when all the following three circumstances are fulfilled.

There is a change in the ownership of a company occurring prior to 6 April 1999, (CTM06340 to CTM06350).

Another company has surrendered ACT paid in an accounting period beginning before 6 April 1999 to the company for use against its current or future CT liabilities.

Within a period of six years beginning three years before the change in ownership there is a major change in the nature or conduct of the trade or business of the surrendering company.

When Section 245A applies, it prevents ACT surrendered to a company in respect of a distribution before the change of ownership from being set against CT on profits arising after the change in ownership.

The meaning of ‘major change in the nature or conduct of the trade or business’ is covered at CTM20320, and in SP10/91, see CTM06380.

The accounting period in which the change of ownership occurs is treated as if the part ending on the date of change in ownership, and the part after, were two separate accounting periods.

Section 245A cancels surrendered ACT. If the receiving company also has its own ACT, Section 245 can apply to that if there is a ‘major change’ in its trade or business.

You should consider not allowing surrendered ACT against the subsidiary’s post change of ownership CT before you have received the accounts of the surrendering company that cover the three year period after the date of change of ownership. There is guidance on this at CTM20320.

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