HMRC - CTM81230 - Change Of Ownership: ACT Previously Held

ICTA88/S245B is another provision limiting the right of a company to:

carry forward ACT,

and

set it against CT liability of a later accounting period where there is a change of its ownership.

Section 245B applies where the company’s chargeable profits include a chargeable gain accruing on the disposal of an asset acquired from a company in its new group, and the disposal takes place within three years of the change of ownership.

The section applies when all of the following circumstances apply:

there is a change in the ownership of a company on or after 14 March 1989,

at the time of the change the company has surplus ACT which is being carried forward to be set against future CT liabilities,

after the change the company is a member of a group of companies and acquires an asset from another group member on a no gain/no loss basis under TCGA92/S171 (1),

the company disposes of the asset, prior to 6 April 1999, within three years of the change of ownership and realises a CG.

In calculating the surplus ACT at the time of the change of ownership (second bullet above), the accounting period in which the change in ownership occurs is treated as two separate accounting periods:

one up to the date of the change of ownership, and

one after the date of the change of ownership.

Where Section 245B applies, there is a restriction to the amount of ACT which can be set against the company’s CT liability for the accounting period in which the chargeable gain is realised. The restriction is achieved by a reduction to the limit imposed by ICTA88/S239 (2). The limit for accounting periods ending on or after 17 March 1987 is at CTM20150.

The reduction is the lesser of:

the ACT that would be payable (a part from ICTA88/S241, which deals with the calculation of ACT where a company receives franked investment income) on a distribution which, together with the ACT payable on the distribution, equals the chargeable gain on the asset concerned,

and

the amount of the surplus ACT at the time of the change of ownership.

Where an asset has changed its nature between the acquisition and disposal by the company, Section 245B treats the acquired asset and disposed asset as being the same asset if the value of the disposed asset is derived in whole or in part from the acquired asset. This applies in particular where a lease has merged with its freehold reversion on the acquisition by the lessee of the reversion.

Example

All the issued share capital of Company C is bought by a limited company, which is a member of the Company W group of companies, on 1 April 1991. So from 1 April 1991 Company C is a member of the Company W group. Company C’s accounting period is the year to 31 March. At 1 April 1991 Company C has surplus ACT to carry forward of £11,500. It does not have CT liabilities for the years ended 31 March 1992 and 31 March 1993. In June 1991 Company C acquires a painting from Company D, which is a member of the Company W group, ona no gain/no loss basis under TCGA92/S171 (1). Company C disposes of the painting on 1 February 1994, and realises a CG of £40,000. The company has other profits of £16,000, and so the amount of profits chargeable to CT for the year ended 31 March 1994 is £56,000. All the circumstances for the application of ICTA88/S245B are present. There are three associated companies in the Company W group.

Lower relevant maximum amount for Company C for the year ended 31 March 1994 = 1/4 x£250,000 = £62,500.

Company C’s profits of £56,000 are less than £62,500. This means Company C’s profits of £56,000 are charged at the small companies rate of 25%, which gives a CT liability of £14,000. The ACT rate for the year ended 31 March 1994 is 9/31. The ACT that the company can set against the CT liability of £14,000 is limited by ICTA88/S239 (2) to £12,600 as follows.

Distribution £43,400 + ACT payable (at 9/31) £12,600 = £56,000 (equals the company’s chargeable profits).

ICTA88/S245B applies, and so there is a restriction to this limit of £12,600.

The restriction is that the limit is reduced by the lesser of the surplus ACT at the time of the change of ownership of £11,500, and £9,000. The £9,000 is the amount of ACT(9/31 x £31,000 = £9,000) that would be payable on a distribution which, together withthe ACT, equals the chargeable gain on the asset of £40,000. So even though the surplus ACT of £11,500 is less than the ICTA88/S239 (2) limit of £12,600, the company can only set off surplus ACT of £3,600 against its CT liability for the year ended 31 March 1994.

(This figure equals the ICTA88/S239 (2) limit applied to the profits excluding the chargeable gain concerned.)

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