HMRC - CTM81502 - Groups: Group Relief: Surrendering Company Not UK Resident: Outline

ICTA88/S402 (2), (2A) and (2B)FA06 introduced an extension to the group loss relief rules.

The new rules do not apply to consortia.

The new legislation applies where a UK parent company has a foreign subsidiary (this includes indirectly as well as directly held subsidiaries) that has incurred a foreign tax loss, and that subsidiary:

is either resident in the European Economic Area (EEA); or

has incurred the loss in a permanent establishment in the EEA.If certain conditions are met, a UK parent company (or a UK resident subsidiary of the UK parent company) may be able to claim to set an amount representing the foreign tax loss against its profits.

The new legislation was effective from 1 April 2006, except for an ‘unallowable loss’ (CTM81550) rule, which applied from 20 February 2006.

For accounting periods ending or treated as ending before 1 April 2006, a UK parent (or a UK resident subsidiary of the UK resident parent company) with a foreign subsidiary that has incurred a foreign loss and either

is resident in the European Economic Area (EEA), or

the foreign subsidiary has exhausted the possibilities available in its state of residence of having the losses taken into account for the accounting period concerned by the claim for relief and also for previous accounting periods, if necessary by transferring those losses to a third party or by offsetting the losses against the profits made by the subsidiary in previous periods, and

there is no possibility for the foreign subsidiary’s losses to be taken into account in its state of residence for future periods either by the subsidiary itself or by a third party, in particular where the subsidiary has been sold to that third party.Such a claim must be made in accordance with the time limits set out in paragraph 74 of Schedule 18 to the Finance Act 1998 (CTM97045 onwards).

It is important to obtain full factual information of the steps that were taken to try to make use of the possibilities available in the other state. If any possibilities existed in the subsidiary’s Member State, we want to know why they were not exhausted. The onus remains on the claimant to demonstrate that it meets the tests imposed by the ECJ in its ruling.

The interpretation and application of the preliminary ruling of the ECJ in Marks & Spencer plc v Halsey remains the subject of continuing litigation before the Special Commissioners and may possibly give rise to further appeals on a point of law.

This legislation does not affect the existing group loss relief rules, (CTM80100onwards), which will continue to apply between UK resident companies or in relation to UK permanent establishments of companies not resident in the UK.

Next page