HMRC - CTM81510 - Groups: Group Relief: Surrendering Company Not UK Resident: Amount Of The Loss: Overview

ICTA88/S403E, ICTA88/S403F & ICTA88/S403G

If certain strict 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 suffered by a subsidiary resident in another European Economic Area (EEA) territory against its profits.

The tax loss to be considered is the loss computed under the rules of the EEA territory in which the surrendering company is resident, or, in the case of a company not resident inthe EEA, the rules of the EEA territory where it carries on a trade through a permanent establishment.

There are four conditions, each of which must be satisfied before a loss incurred by a subsidiary resident in another EEA territory will be available for group relief in the UK.These are:

The equivalence condition, which requires the loss to be of the same nature as losses that are already allowable under the existing group relief rules, (CTM81515).

The EEA tax loss condition, which requires that there is a loss under the rules of the EEA territory of residence of the would-be surrendering company (excluding losses of a UK permanent establishment), (CTM81520).

The qualifying loss condition, which requires that the loss is one which cannot be relieved in the EEA territory of residence, or EEA territory of establishment of the permanent establishment, and has not been relieved in any other territory, (CTM81525).

The precedence condition, which requires that the loss cannot be relieved in any territory of residence of an intermediate foreign company in the ownership chain between the surrendering company and a UK resident company of which it is a 75% subsidiary, (CTM81545).

There is an avoidance provision at ICTA88/S403G, the unallowable loss rule. This prevents a company making arrangements in order to ensure that loss relief is given underICTA88/S402, (CTM81550).

Previous page

Next page