HMRC - CTM81520 - Groups: Group Relief: Surrendering Company Not UK Resident: Amount Of The Loss: The EEA Tax Loss Condition

ICTA88/S403F (2)(b) and ICTA88/SCH18A (3)

There are four conditions, which must be satisfied before a loss will be available for group relief in the UK, (CTM81510). The second of these is the European Economic Area (EEA) tax loss condition.

The EEA tax loss condition is that the amount gives rise to a tax loss under the rules ofthe relevant EEA territory.

There are two tests, one for companies which are resident in an EEA territory and one for companies which are not so resident but have a permanent establishment in the EEA (which gives rise to a potential claim for relief).

The test for EEA resident companies excludes losses arising to permanent establishments through which a trade is carried on in the UK. Such losses are already within the rules for group relief, (CTM80310).

The test for the EEA permanent establishments of non-EEA residents also requires that the loss is not attributable to activities which are or could be ignored when calculating the company’s charge to tax in the EEA territory by virtue of the operation of a double taxation treaty. This includes treaties between two overseas territories as well as treaties between the UK and an overseas territory, (CTM80340).

Tax is defined for this purpose as a tax that corresponds to UK income tax or CT, but it includes similar taxes levied by divisions of an overseas territory, for example a province or municipality.

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