HMRC - CTM81530 - Groups: Group Relief: Surrendering Company Not UK Resident: Amount Of The Loss: The Qualifying Loss Condition: Current & Previous Periods

ICTA88/SCH18A (6)

There are four conditions, which must be satisfied before a loss arising in a 75% subsidiary resident in another European Economic Area (EEA) territory will be available for group relief in the UK, (CTM81510). The third of these is the ‘qualifying loss condition’ (CTM81525), which in turn has three conditions which need to be met.

The first of these conditions is:

‘The loss cannot be relieved in the current or previous periods in the EEA territory in which the subsidiary is resident’.

A loss within the first condition will not qualify:

if it can be taken into account (or otherwise given as relief) when calculating any person’s profits or liability to tax under the rules of the relevant EEA territory.

if the company or any other person has failed to take every available step to obtain relief in that territory.

The test is strict. If on the facts of the case there was any possibility at all of the company or any other person obtaining relief, for instance by claiming, selling or otherwise transferring a loss, so that it was available to another person, then failure to do so means that not every step has been taken. Similarly if any person did not make a claim for relief that was open to them, then again they have not taken every available step to obtain relief.

Example

If an EEA resident company has a loss in one period and can elect (under the tax rules of the territory in which it is resident) to carry it back to a previous period, but refrains from or forgets to do so, then it will not be a qualifying loss. This will be the case regardless of whether or not the economic value of its relief would have been greater if it had been able to surrender the losses in the UK.

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