HMRC - CTM81535 - Groups: Group Relief: Surrendering Company Not UK Resident: Amount Of The Loss: The Qualifying Loss Condition: Future Periods

ICTA88/SCH18A (7)

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 second of these conditions is the loss:

’cannot be relieved in future periods in the EEA territory in which the subsidiary is resident’.

This second condition looks at the availability of relief for future periods. This test is to be applied immediately after the end of the period in which the loss arises. At that point in time it is necessary to determine that there is no possibility that the loss will ever be taken into account or otherwise be given as relief for any person. It is irrelevant that with hindsight, the loss was ultimately not relieved.

Example

If a company has made a loss in its EEA territory of residence but at the year end it continues to exist, either trading or with other sources of income, into the next period and there is a possibility that relief may arise in a later period, against trading orother profits then the loss cannot be surrendered. If, as a matter of fact, no profits arose before the carry forward of relief became time barred, this does not alter the position that the loss was carried forward and might have been given as relief. This is a distinct test applied to the situation existing at the time of loss and does not interact with the two-year time limit for claims to group relief, which remains unchanged.

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