HMRC - OT04280 - Payment Provisions - Interest Cap

OTA75\SCH2\PARA17

OTA75\SCH2\PARA17 was introduced by FA90\S121 as one of a number of measures concerned with relief for abandonment and provides for a limit on the amount of interest payable on certain repayments of PRT. Its purpose is to prevent the possibility that unlimited carry back of losses could generate repayments which, together with interest thereon, exceed the expenditure incurred (after taking the consequential CT effects into account).

The intention of the legislation was that where any repayment or part of any repayment arises as a result of the carry back of a loss from a chargeable period ending after 30 June 1991 the total of the repayment and the interest arising thereon would be limited to the difference between 85% of the loss carried back and the amount of the repayment attributable to that loss (i.e. the interest is ‘capped’).

When the rate of charge of PRT was reduced by FA93 from 75% to 50% (see OT03525) the ‘cap’ was reduced from 85% to 60%. This applies to repayments in respect of chargeable periods ending after 30 June 1993 i.e. after the rate cut. Where losses are carried back to periods for which the rate of the PRT charge was 75%, the 85% cap continues to apply to the repayments for those periods. The interest cap is defined in para 17(4) as the difference between -

85% (or 60% as appropriate - see above) of the allowable loss, and

the amount of the appropriate repayment.

The ‘appropriate repayment’ is defined (but see also next sub-para) in Para17(2) and Para(1)(c) as the amount repaid by virtue of so much of the amendment as is attributable to the losses carried back.

A deficiency which existed in Para 17 as originally enacted and which concerned the case where a loss was carried back to a period for which an amount of APRT fell to be repaid was remedied by FA93\S186(4). That amendment made clear that for the purposes of the cap calculation the “appropriate repayment” is to be construed as meaning the aggregate of that repayment and the repayment of APRT (Para17(6)).

In the case of Elf Enterprise Caledonia Ltd and others v CIR (Leaflet 3407) the appellants argued (inter alia) that the allowable loss referred to at OTA75\SCH 2\PARA17(4)(a) is the total loss made in the later period and not just the amount carried back to the earlier period i.e. if a £20m loss arises in 2H91 and is carried back to 1H84 and 2H84 (say £10m each) the value to go in the OTA75\SCH 2\PARA17(4)(a) part of the cap calculation is 85% of £20m, not 85% of £10m. The High Court found in favour of the Revenue that, where a loss in a later period is to be relieved against the profits of two earlier periods, the cap is to be applied in relation to each period on the basis that the “allowable loss” in OTA75\SCH2\PARA17(4)(a) is only that part of the loss treated as reducing the assessable profits of the particular earlier period.

Where a PRT repayment follows a series of PRT payments, for the purpose of identifying the date the PRT being repaid was paid the series of payments should be dealt with on a first in first out basis.

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