HMRC - OT14620 - Transactions - Scope Of Application

OTA75\Sch4\Para2The provisions in OTA75\Sch4\Para2 apply to any transaction between connected persons (OT15580) and any transaction made otherwise than at arm’s length (OTA75\Sch4\Para2(2)).

Where OTA75\Sch4\Para2 applies the expenditure that would otherwise be regarded as having been incurred by the claimant is treated as only having been incurred to the extent that it does not exceed the lowest of the following amounts:

the amount of the expenditure incurred in an arm’s-length transaction between unconnected persons (or if there has been more than one such transaction, the later or latest of them) in acquiring bringing into existence or enhancing the value of that asset, or

the amount of the open market consideration which might reasonably have been given for the acquisition, bringing into existence, or enhancement of the value, of the asset in an arm’s-length transaction between unconnected persons, or

the amount of the disposal receipt (OT15060) chargeable on the other party to the transaction, or

in certain circumstances the amount of the disposal receipt chargeable on an earlier participator.

The limits in (a) and (b) above apply to all transactions within OTA75\Sch4\Para2 with the result that the allowable cost can never exceed the lower of the arm’s length cost to the group or the market value at the time of the transaction.

Restriction to amount of Disposal Receipt

Where the other party is a participator in a taxable field.

The further limit by reference to the amount of the disposal receipt chargeable on the other party to the transaction applies where a disposal receipt is chargeable on that participator, or would have been if the disposal receipt had not been reduced to nil as a consequence of reductions provided for elsewhere in the Acts. The limit (for comparison with the limits in (a) and (b) above) is then the amount of the disposal receipt, the reduced disposal receipt, or nil (where the disposal receipt is reduced to nil). This limit does not apply where there is no disposal receipt charge, rather than the chargeable amount being reduced to nil, for example where the asset is sold in pursuance of a licence transfer (OT15060).

The amount of a chargeable disposal receipt may be reduced under OTA83\S7A to take into account previous tax-exempt tariffing use (OT15250). Reductions may also be made under OTA83\Sch2\Para9 and OTA83\Sch2\Para10 to reflect brought-in asset (OT11500) and deballasting use (OT15060).

Where the other party is not a participator in a taxable field.

The rule in (d) applies where an asset that has been subject to a series of connected transactions is acquired from a connected person who is not a participator and that asset was previously owned by a connected participator in a taxable field. Where this rule applies the disposal receipt limit is determined by reference to the latest disposal by a connected participator that gave rise to a disposal receipt, or that would have given rise to a disposal receipt if it had not been reduced to nil.

Where an asset is acquired from a connected person who is a participator in a non-taxable field (OT03515) no relief is given for the cost (FA93\S193(2)).

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