HMRC - OT14740 - Transactions - Insurance

One of the more common expenses that are subject to OTA75\Sch4\Para2 is insurance. Affiliates (sometimes termed ‘captives’) will provide insurance facilities either directly to the claimant (the AB route) or through an intermediary, who may be apparently unconnected with the captive and the claimant (the ACB route).

In either case OTA75\Sch4\Para2 will need to be considered. The AB route is clearly within the description of any transaction between connected parties. The ACB route is unlikely to be free of circumstances and arrangements that would not pertain in a transaction in which a third party insurer replaced the captive.

The application of OTA75\Sch4\Para2 is in principle no different for insurance than for expenditure on an asset, but the method of establishing the arm’s length transaction is different.

A physical asset can be created and then sold and re-sold as time goes on, and such a string of transactions may lead up to the one to be considered in the context of OTA75\Sch4\Para2. It is then possible to track back to the nearest transaction at arm’s length, or in a group situation to the one that brought the asset into the group, and to determine the limit of allowable cost.

With insurance the process works in the opposite direction. An insurance contract is created in respect of a particular risk and it cannot be sold to someone else to cover a different risk. The supplier of the insurance can cover the risk by reinsurance possibly leading to a string of such reinsurances.

When reviewing the transaction subject to OTA75\Sch4\Para2 it is therefore necessary to track along the series of subsequent transactions to identify the first which secures insurance on an arm’s length basis from a party outside the group, taking account of variations in the risk passed on.

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