HMRC - OT16510 - Losses - Unrelievable Field Losses: Licence Transfers - Anti-Avoidance - Details

FA01\S101 amends OTA75\S6 by providing that the calculation of a UFL is subject to FA01\Sch32 (OTA75\S6(1D)). FA01\Sch32 ensures that a UFL cannot exceed the UFL that would have arisen had there been no transfer of the relevant interest in the field. While essentially anti-avoidance legislation, transactions do not have to be specifically avoidance- motivated to be caught by the new rules. It is also worth noting that the Board’s powers to limit the use of opt out transfers were not extended, not least because opt outs can actually prevent relief being lost in particular cases, see OT16550.

FA01\Sch32 applies where

there has been a transfer of the whole or part of an interest in a field ,

the transfer is an ‘excluded transfer’,

and an allowable loss accrues from the field to the ‘old participator’ (the transferor), the ‘new participator’ (transferee) or a ‘subsequent new owner’ (FA01\Sch32\Para1).

An ‘excluded transfer’ is defined in FA01\Sch32\Para2 as

a transfer to which Parts II and III of FA80\SCH17 do not apply because there has been a successful FA80\Sch17\Para4 disapplication,

and which takes place under an agreement made on or after 7 March 2001, or in the case where there is a conditional agreement in place before 7 March 2001, where the condition is satisfied on or after that date.

FA01\SCH32\PARA4 provides that transfers exclude illustrative agreements and redeterminations (see OT18290). Compare FA80\Sch17\Para1(1), see OT18020.

Under FA01\Sch32\Para3, a ‘subsequent new owner’ is any participator in the field who owns the field interest (or a part of it) after it has been transferred by the new participator (the transferee in the excluded transfer).

Where the conditions in FA01\Sch32\Para1 all apply, the allowable loss in question must first be set off against the participator’s own assessable profits arising in other chargeable periods in accordance with the provisions of OTA75\S7. If there are a number of transfers, it may be that not all are ‘excluded’. If that is the case, set offs under FA80\Sch17\Para7 and FA80\Sch17\Para15 also need to be made. FA80\Sch17 operates in priority to FA01\Sch32.

The second step is then to offset any balance remaining of the loss against the ‘relevant profits’ accruing to participators who have held the same field interest as the loss-maker at different times. They are referred to as ‘different owners’ in FA01\Sch32\Para7(1). This subparagraph also makes it clear that the offset is only deemed to take place for the purpose of calculating the UFL. In other words there is no need for any assessments to be amended.

There are provisions in FA01\Sch32\Para8(2)-(5) which cover the situations in which the interests of the loss-maker and different owner (or different owners) do not equate, e.g. the different owner’s interest is only part of the loss-maker’s interest, in which case only the corresponding part of the latter’s loss should be relieved against the former’s profits.

‘Relevant profits’ are defined in FA01\Sch32\Para6(2). They are calculated after taking account of

any expenditure unrelated to the field which was allowed following a claim made on or after 29 November 1994 (see OT16250),

and any losses relieved under OTA75\S7.

The final balance is then claimable as a UFL.

Under FA01\Sch32\Para9 an allowable loss may not be relieved against relevant profits if those profits have already been utilised for the purpose of FA01\Sch32\Para7.

If there is more than one loss-maker, there is an order of set off against relevant profits. Under FA01\Sch32\Para10(1) the loss accruing to the participator who held the relevant interest at an earlier time is relieved against different owner profits in priority to the loss from the interest accruing to a participator at a later time. FA01\Sch32\Para10(2) then applies where the field interest is held by more than one loss-making participator at the same time. In such a case the losses are relieved against different owner profits in amounts proportionate to the size of the interest respectively held.

Previous page

Next page