HMRC - OT16550 - Losses - Stranded Losses

Under FA80\Sch17\Para7, when a participator (OP) transfers the whole or part of its interest in a field to a new participator (NP), any of OP’s unused loss is transferred to NP, provided a successful FA80\Sch17\Para4 application is not made and allowed, see OT18030.

But NP cannot claim any part of that transferred loss as an unrelievable field loss (UFL) because the loss has not accrued to it (OTA75\S6(1B)(b)). Because of the transfer OP would not be able to claim it either, even if NP did not use it (wholly or in part) against any of its own profits.

As such it is possible that losses will be ‘stranded’. See the example below.

The order of setting off losses can therefore be important in such cases. The legislation does not make it clear, but HMRC will accept a ‘first in, first out’ (FIFO) basis, i.e. losses transferred to NP can be used in priority to losses of its own against any profits it makes.

Example

Assuming the transfer is within FA80\Sch17, NP’s UFL will be 100, even though, following the FA80\Sch17\Para7 transfer, it has unused losses of 300. Losses of 200 are therefore stranded.

If the transfer is subject to a successful application under FA80\SCch7\Para4, OP’s loss is not transferred. In that case, NP no longer can claim a UFL because its CP6 loss can be relieved under OTA75\S7 while, conversely, OP can claim a UFL of 300. FA01\Sch32 (see OT16500) ensures that its CP4 loss is first relieved against NP’s relevant profits of 200.

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