HMRC - OT16600 - Losses - Repayment Interest

Where losses give rise to a repayment of PRT, there are provisions in OTA75\Sch2\Para16 (subject to OTA75\Sch2\Para17) for the repayment to carry interest. The basic rule is that where a repayment is due, interest is payable from the later of

two months after the end of the chargeable period to which the assessment relates or

the date on which the tax was paid.

Interest is payable at the rate specified by Treasury order under FA89\S178.

For further detail on the interest provisions in general, see OT04270.

‘The Interest Cap’, OTA75\Sch2\Para17

OTA75\Sch2\Para17 was introduced by FA90\S121 and sets a limit on the amount of interest on certain PRT repayments. Without it there was the possibility that unlimited carry back of losses would generate repayments that exceeded the expenditure incurred (after taking the consequential CT effects into account).

The cap works as follows. 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 interest arising is limited to the difference between

60% (or where applicable 85%) of the allowable loss carried back, OTA75\Sch2\Para17(4)(a)

and the amount of the repayment attributable to that loss, OTA75\Sch2\Para17(4)(b).

The 60% rate applies to repayments in respect of chargeable periods ending after 30 June 1993. For the 30 June 1993 period and earlier ones, the rate is 85%: this continues to apply to repayments that are carried back to those periods. The cut in the rate mirrored the reduction in the PRT rate from 75% to 50% in FA93\S186(1).

Meaning of Allowable Loss

In Elf Enterprise Caledonia Ltd and others v CIR (Leaflet 3407) one of the appellants’ arguments was 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. If a £20m loss arose in 2H91 and was carried back to 1H84 and 2H84 (say £10m each), the value to be used in the cap calculation would be 85% of £20m in each period, not 85% of £10m.

However, the High Court found in favour of the Revenue. So where a loss in a later period is relieved against the profits of two earlier periods, the cap is 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.

Order of Set off

If there is a loss arising in more than one chargeable period, each of which is carried back, the loss arising in the earlier chargeable period should be relieved first on a ‘first in, first out’ basis.

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