HMRC - OT18050 - PRT: Transfer Of Licence Interests - Unused Losses

FA80\Sch17\Para7

FA80\SCH17\PARA7(1) provides for the transfer to the new participator (NP) of the losses (or an appropriate part of them in the case of a part-transfer) accruing to the old participator (OP) from the field in the transfer period or any earlier chargeable period to the extent that they have not been used by OP in any of those periods. If OP could have used the losses (under OTA75\S7(2), see OT16100) but did not, they are still available for transfer.

FA80\SCH17\PARA7(2) sets out the consequences of a transfer of losses. Firstly, NP may claim relief, under OTA75\S7, against assessable profits from the field accruing to him in the transfer period or later. Secondly, the losses transferred are no longer available for set off against OP’s assessable profits.

Exclusion of non-field expenditure, FA80\Sch17\Para3

Any ‘expenditure unrelated to the field’ is excluded from the transferable losses. FA80\SCH17\PARA7(4) defines expenditure unrelated to the field as

abortive exploration expenditure (OTA75\S5), see OT13950,

exploration and appraisal expenditure (OTA75\S5A), see OT13975,

research expenditure (OTA75\S5B), see OT14100,

cross field allowance (FA87\S65), see OT13000, and

unrelievable field losses (UFL) (OTA75\S6), see OT16250.

Where such expenditure has been claimed on or after 29 November 1994 and the field interest changes hands on or after that date, then the losses transferred to NP are reduced by the amount claimed.

FA80\SCH17\PARA7(6) ensures that the maximum effect of the reduction shall be to reduce any transferred losses to nil and no further.

Where a part-share of a company’s interest in the field is transferred with the consequence that only a part of OP’s loss is transferred, FA80\SCH17\PARA7(5) ensures that the corresponding part of any ‘expenditure unrelated to the field’ is taken into account when reducing the transferable loss. So if only 50% of the loss is transferred (because say OP retains 50% of its interest), the loss is reduced by only 50% of the ‘unrelated expenditure’.

Stranded losses

Should there be losses transferred under FA80\SCH17\PARA7, which remain unused at the end of the field’s life, they will be stranded. They are not available to NP for use under OTA75\S6 (Unrelievable Field Losses) (UFLs - see OT16250) because that section only applies to losses which have accrued to the participator and there is nothing in Paragraph 7 to deem transferred losses to have accrued to NP. In addition, Paragraph 7(2) states that the losses transferred to NP may be relieved under OTA75\S7; by implication they may not be relieved under any other section.

Such transferred losses are also not available to OP, because FA80\SCH17\PARA7(2) provides, in general terms, that they are not available for set off against OP’s assessable profits. It might be argued that this means assessable profits in the same field, but if that were so, all the losses transferred would be available for OP to use under OTA75\S6, without any restriction for the losses used by NP under OTA75\S7. This is because the measurement of a UFL is by reference to the losses of a participator less such of those losses as cannot be used by him under OTA75\S7.

Depending on the situation losses incurred by an OP may not be stranded if an application is made under FA80\SCH17\PARA4. On the interaction of stranded losses and FA80\SCH17\PARA4 see OT16550.

Opt-out transfers

An opt-out transfer under FA80\SCH17\PARA4 (OP’s loss not being transferred) could lead to the artificial creation or inflation of a UFL claimable by OP under OTA75\S6. See OT16500regarding FA01\SCH32 which counters the potential loophole.

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