HMRC - OT18120 - PRT: Transfer Of Licence Interests - Surrender Of New Participator’S Loss

FA80\Sch17\Para14

This paragraph provides for the old (OP) and new participator (NP) to elect jointly, in certain circumstances, for a loss accruing to NP in the transfer period or a later chargeable period to be surrendered to OP. The circumstances are

OP has no interest in the field at the end of the transfer period and

the loss was created, or augmented, by expenditure transferred to NP under FA80\SCH17\PARA6, see OT18040.

The amount which may be surrendered is the lesser of

the expenditure transferred under FA80\SCH17\PARA6 which is included in NP’s loss calculation and

OP’s total assessable profits, net of losses under OTA75\S7 (see OT16150), accruing to it in chargeable periods up to and including the period after the transfer period.

For NP, any loss so surrendered is treated as if it had been relieved against assessable profits in chargeable periods before that in which the loss actually arose. It is thus no longer available to NP.

For OP, the loss is treated as accruing in the second chargeable period following the transfer period. This takes account of the fact that it will remain a participator for the two periods following the period in which it disposed of its licence interest (for a definition of a participator under OTA75\S12(1) see OT03100). However, in practice there are unlikely to be any assessable profits after the transfer period, and the loss can be assumed to be available in full for set off against assessable profits of the transfer period, or earlier periods.

The paragraph is of particular practical relevance where a transfer takes place at the end of a chargeable period, so that, for that period, OP is assessed on all the incomings but all the expenditure is transferred to NP. In such cases, provided OP and NP have made the election, NP’s loss (once determined) should be given to OP in the transfer period as soon as possible after the loss determination on NP.

Payment on account

In computing its payment on account for the transfer period (see OT18110), OP is not entitled to a deduction for the expenditure transferred to NP under FA80\SCH17\PARA6. And even if an election can be made under FA80\SCH17\PARA14, there is no provision for OP to deduct the anticipated loss. This is, however, only a timing difference.

Safeguard

On safeguard generally, see OT17500.

A more important difficulty arises if the transfer period is a safeguard period for OP. Take the situation in which expenditure allowed is linked to an assessment for the transfer period and that expenditure has been transferred to the NP under FA80\SCH17\PARA6. OP’s safeguard calculation (specifically the calculation of its ‘adjusted profit’), if there had not been a transfer, would have included assessable profits after deducting expenditure allowed for the transfer period. As a consequence of the transfer, that expenditure has gone to NP, but come back to OP in the guise of a loss. But the safeguard calculation will now include assessable profits before any deduction for expenditure allowed for the transfer period, because OTA75\S9(2)(a)(i) defines ‘adjusted profit’ as assessable profit before any reduction for losses. There is accordingly a potential loss of safeguard benefit.

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