HMRC - OT18130 - PRT: Transfer Of Licence Interests - Terminal Losses Accruing In Chargeable Period Ending After 17 March 2004

FA80\Sch17\Para15

This paragraph applies if an allowable loss accruing to the new participator (NP) from the field is to be relieved under OTA75\S7(3) (the mandatory set-off against assessable profits once production has ceased permanently (OT16200)) and the loss exceeds the NP’s assessable profits that can be relieved. The current rules apply to losses accruing in chargeable periods ending after 17 March 2004.

For the rules relating to losses accruing in earlier chargeable periods see OT18135.

The rules in FA80\SCH17\PARA15 detail how the balance of the NP’s losses are to be relieved against assessable profits of participators that previously held the interest in the field. If there is still a loss remaining after all the relevant profits have been relieved then to the extent that it exceeds the aggregate of any the loss is regarded as an unrelievable field loss (“UFL”) (OT16250).

Where this paragraph applies the balance of the loss is treated as an allowable loss to be relieved under OTA75\S7(3) in the following order:

against the assessable profits accruing to the old participator (OP) that are attributable to the OP’s former interest that is comprised in the loss-maker’s interest,

if the OP acquired the interest from another participator, against the assessable profits accruing to that earlier participator that are attributable to the earlier participator’s former interest that is comprised in the loss-maker’s interest,

if that previous participator acquired the interest from an earlier participator, against the assessable profits accruing to the earlier participator that are attributable to the earlier participator’s former interest that is comprised in the loss-maker’s interest,

and so on back through the participators who held that interest until either the loss is fully utilised or there are no further profits attributable to that interest.

The loss that can be set against an earlier participator’s assessable is relieved first against the assessable profit arising in the latest possible chargeable period with any balance of the loss offset against the profits of previous periods, working backwards (FA80\SCH17\PARA15(5)).

In general these rules apply to all the participators who held the interest before the loss-maker but see (FA80\SCH17\PARA4).

Represented Interest

The purpose of these rules is to ensure that losses can potentially be relieved against all of the past assessable profits relating to the interest in the field held by the loss-maker. It is therefore necessary to identify the previous owner’s interest that is comprised in the loss-maker’s interest. This is known as the “represented interest”.

It will often be the case that a previous owner’s interest does not match the loss-maker’s interest, for example, where 100% participator A transfers a 50% interest to each of B and C, and B subsequently makes a loss. In this situation the profits attributable to A’s represented interest are the profits relating to that 50% of A’s interest which is subsequently held by B. The assessable profits attributable to the represented interest are determined on a just and reasonable basis having regard to the size of the interest held (FA80\SCH17\PARA15(9)).

See Example 1 at OT18131.

New participator in relation to two or more old participators FA80\Sch17\Para15(4)

Where a person is a NP in relation to two or more OPs the remaining loss is apportioned between those OPs on a just and reasonable basis taking account the interests transferred by each of them to the NP. For example A who had a 60% interest in field Z and B who had a 40% interest in field Z, transfer their interests to C who incurs a loss of 1000 that cannot be relieved against C’s assessable profits. The remaining loss is apportioned in accordance with the interests transferred from A and B and the losses that may be relieved against the assessable profits of A and B are 600 and 400 respectively.

Old participator in relation to two or more new participators FA80\Sch17\Para15(8)

As losses are only relievable against the profits attributable to a represented interest it is not possible for losses accruing on part interests to be relievable against the same profits. For example where 100% participator A transfers a 50% interest to each of B and C and both B and C subsequently make a loss then B’s loss is relievable against A’s assessable profits that relate to B’s 50% field interest and C’s loss is relievable against A’s assessable profits that relate to C’s 50% field interest.

Where however the transfers of interest occur sequentially, for example where A transfers a 100% interest to B who then transfers a 100% to C, and both B and C make losses, then both B’s and C’s losses are relievable against A’s assessable profits. Where losses fall to be relieved against the same assessable profits, the losses of the earlier owner of the interest are relieved in priority to a later owner.

Transfer of Interest before 17 March 2004

The rules for relieving losses against the assessable profits of earlier participators are modified in relation to some transfers before 17 March 2004. Where a person is an OP in relation to a transfer before 17 March 2004 but is also a NP in relation to an earlier transfer, and FA80\Sch17 parts 2 and 3 applied to both transfers, losses cannot be relieved against the assessable profits accruing to the person who was the OP in relation to the earlier transfer (FA80\SCH17\PARA15(7)).

In practice this means that, where there have been two or more transfers of the same interest before 17 March 2004, the remaining losses can only be relieved against the assessable profits of a participator before 17 March 2004 if -

that participator held the interest on 17 March 2004,

that participator was an OP in relation to the participator who held the interest on 17 March 2004

See Example 3 at OT18133.

Opt-outs, FA80\Sch17\Para4

A NP and an OP may make an application for the provisions of FA80\SCH17 Parts 2 and 3 not to apply (OT18030). If a successful application is made in relation to a transfer then the rules in FA80\SCH17\PARA15 do not apply to that transfer and losses cannot be relieved against the assessable profits of the OP in relation to that transfer or the assessable profits of the previous owners of that interest before the OP.

If the transfer that is not subject to Parts II and III of FA80\SCH17 was made after 7 March 2001 there are anti-avoidance rules in FA01\SCH32 that deem losses to be set against the profits accruing to participators who have held the same field interest as the loss-maker at different times (see OT16500).

Unrelated Field Expenditure

The calculation of an UFL is subject to OTA75\S6(5)-(9). These subsections require a reduction of the allowable loss to take account of any relief given for expenditure incurred outside the field (OT16250). The reliefs in question as set out in OTA75\S6(9) are:

abortive exploration expenditure (OTA75\S5)

exploration and appraisal expenditure (OTA75\S5A)

research expenditure (OTA75\S5B)

cross field allowance (FA87\S65)

UFLs from another field (OTA75\S6).

FA80\SCH17\PARA15(2) ensures that this reduction also applies where a loss arises after a transfer of interest. If there is still a loss remaining after all the earlier participators’ assessable profits have been relieved it is only regarded as an UFL to the extent that it exceeds the aggregate of any relevant previous participators’ expenditure unrelated to the field.

For the purpose of this restriction a relevant previous participator’s expenditure unrelated to the field is the unrelated field expenditure allowed to that participator on a claim or election made after 16 March 2004 that relates to his represented interest, see Example 2 at OT18132.

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