



Corporation Tax Act 2010

2010 CHAPTER 4

PART 5

GROUP RELIEF

CHAPTER 3

SURRENDERS MADE BY NON-UK RESIDENT COMPANY RESIDENT OR TRADING IN THE EEA

Introduction

111 Overview of Chapter

- (1) This Chapter allows a non-UK resident company that is resident or carrying on a trade in the European Economic Area to surrender losses and other amounts it has for a period.
- (2) Section 113 sets out the basic provisions about the surrendering of losses and other amounts.
- (3) Sections 114 to 121 set out conditions that must be met if losses and other amounts are to be surrendered (see Step 2 in section 113(2)).
- (4) Sections 122 to 128 set out other rules, assumptions and exclusions (see Steps 3 and 5 in section 113(2)).

112 EEA related definitions

In this Chapter—

“EEA accounting period” means a period for which an EEA related company has a loss or other amount,

“EEA amount” has the meaning given under Step 1 of section 113(2),

“EEA related company” means a non-UK resident company that—

- (a) is resident in an EEA territory, or
 - (b) is not resident in any EEA territory but is carrying on a trade in an EEA territory through a permanent establishment, and
- “EEA territory”, in relation to any time, means a territory outside the United Kingdom that is within the European Economic Area at that time.

Basic provisions about surrendering losses and other amounts

113 Steps to determine extent to which loss etc can be surrendered

- (1) This section applies if an EEA related company has a loss or other amount for an EEA accounting period.
- (2) Take the following steps to determine the extent to which the EEA related company may surrender the loss or other amount under this Chapter.

Step 1

Determine the extent to which (if at all) the loss or other amount is eligible for corporation tax relief (apart from this Chapter).

The loss or other amount may be surrendered only so far as it is not so eligible.

A loss or other amount, so far as surrenderable under this Step, is referred to in this Chapter as an “EEA amount”.

Step 2

Determine the extent to which the EEA amount in question meets—

- (a) the equivalence condition (see section 114),
- (b) the EEA tax loss condition (see sections 115 and 116),
- (c) the qualifying loss condition (see sections 117 to 120), and
- (d) the precedence condition (see section 121).

References to “the qualifying part of the EEA amount” are references to the EEA amount so far as it meets all those conditions.

Step 3

Recalculate the EEA amount in accordance with section 128 using the assumptions set out in sections 123 to 126.

The result is called “the recalculated EEA amount”.

Step 4

Determine the amount that may be surrendered.

That amount is—

- (a) the qualifying part of the EEA amount, or
- (b) if less, an amount equal to the relevant proportion of the recalculated EEA amount.

If the recalculated EEA amount is an amount of income or other profits, the amount that may be surrendered is nil.

“The relevant proportion” is the same as the proportion that the qualifying part of the EEA amount bears to the EEA amount.

Step 5

Determine the extent to which (if at all) the amount resulting from Step 4 is excluded by section 127.

If any of that amount is excluded, reduce it accordingly.

- (3) If in recalculating the EEA amount at Step 3 it is to be assumed under section 125 that there are two or more accounting periods in relation to the EEA accounting period, the total of the amounts apportioned to the assumed accounting periods available for surrender under subsection (2) is not to exceed the qualifying part of the EEA amount.
- (4) Under paragraph 70(1) of Schedule 18 to FA 1998, an EEA related company surrenders an EEA amount, so far as eligible for surrender under this Chapter, by consenting to one or more claims for group relief in relation to the amount (see Requirement 1 in section 135).
- (5) In this Part, in relation to losses or other amounts that an EEA related company has for an EEA accounting period—
- “the surrenderable amounts” means the losses or other amounts so far as eligible for surrender under this Chapter,
 - “surrendering company” means the company that has the losses or other amounts, and
 - “the surrender period” means the assumed accounting period under section 125 for which the company is taken to have the surrenderable amounts.

Conditions that must be met

114 The equivalence condition

An EEA amount meets the equivalence condition so far as it corresponds (in all material respects) to a loss or other amount within section 99(1)(a) to (g).

115 The EEA tax loss condition: companies resident in EEA territory

- (1) In the case of a surrendering company that is resident in an EEA territory (“the resident EEA territory”), an EEA amount meets the EEA tax loss condition so far as—
- (a) subsection (2) applies to the amount, and
 - (b) the amount is not excluded by subsection (3).
- (2) This subsection applies to the EEA amount so far as it is calculated in accordance with the rules of the resident EEA territory that are applicable for determining, in the surrendering company’s case, the amount of any loss or other amount eligible for relief from any non-UK tax (see section 187) chargeable under the law of the resident EEA territory.
- (3) The EEA amount is excluded so far as, for corporation tax purposes, it is attributable to a permanent establishment through which the surrendering company carries on a trade in the United Kingdom.

116 The EEA tax loss condition: companies not resident in EEA territory

- (1) In the case of a surrendering company that is not resident in any EEA territory but is carrying on a trade in an EEA territory (“the relevant EEA territory”) through a permanent establishment, an EEA amount meets the EEA tax loss condition so far as—
- (a) subsection (2) applies to the amount, and
 - (b) the amount is not excluded by subsection (3).

- (2) This subsection applies to the EEA amount so far as it is calculated in accordance with the rules in the relevant EEA territory that are applicable for determining, in the surrendering company's case, the amount of any loss or other amount eligible for relief from any non-UK tax chargeable under the law of the relevant EEA territory.
- (3) The EEA amount is excluded so far as it is attributable to activities of the surrendering company that are subject to relieving arrangements.
- (4) "Relieving arrangements" means arrangements within subsection (5) that have the effect mentioned in subsection (6) (or would have that effect if a claim were made).
- (5) Arrangements are within this subsection if they are made with a view to affording relief from double taxation in relation to—
 - (a) any non-UK tax chargeable under the law of the relevant EEA territory and any non-UK tax chargeable under the law of any other territory, or
 - (b) any non-UK tax chargeable under the law of the relevant EEA territory and United Kingdom income or corporation tax.
- (6) The effect referred to in subsection (4) is that the income or gains arising for the EEA accounting period from the activities are ignored in calculating the surrendering company's profits, income or gains chargeable to non-UK tax under the law of the relevant EEA territory for that period.

117 The qualifying loss condition: general

- (1) An EEA amount meets the qualifying loss condition so far as sections 118, 119 and 120 apply to it.
- (2) In this section and sections 118 to 120, "the relevant EEA territory" means—
 - (a) the EEA territory in which the surrendering company is resident, or
 - (b) (as the case may be) the EEA territory in which the surrendering company carries on a trade through a permanent establishment.
- (3) In sections 118 and 119 "relevant non-UK tax" means any non-UK tax chargeable under the law of the relevant EEA territory or any other resident territory.
- (4) A "resident territory" is—
 - (a) if the surrendering company is resident in an EEA territory and is also resident in another territory outside the United Kingdom, that other territory, or
 - (b) if the surrendering company is not resident in any EEA territory, the territory (or territories) in which it is resident.

118 The qualifying loss condition: relief for current and previous periods

- (1) This section applies to an EEA amount so far as subsections (2) and (3) apply to it (but subject to subsection (4)).
- (2) This subsection applies to the EEA amount so far as, for the purposes of any relevant non-UK tax, the EEA amount cannot be taken into account in calculating any profits, income or gains that—
 - (a) arise in the EEA accounting period or any previous period to the surrendering company or any other person, and

- (b) are chargeable to that tax for the EEA accounting period or any previous period.
- (3) This subsection applies to the EEA amount so far as, for the purposes of any relevant non-UK tax, the EEA amount cannot be relieved in the EEA accounting period or any previous period—
 - (a) by the payment of a credit,
 - (b) by the elimination or reduction of a tax liability, or
 - (c) in any other way.
- (4) This section applies to the EEA amount (or a part of it) only if every step is taken (whether by the surrendering company or any other person) to secure that the EEA amount (or part) is—
 - (a) taken into account as mentioned in subsection (2), or
 - (b) relieved as mentioned in subsection (3).

119 The qualifying loss condition: relief for future periods

- (1) This section applies to an EEA amount so far as subsections (2) and (3) apply to it.
- (2) This subsection applies to the EEA amount so far as, for the purposes of any relevant non-UK tax, the EEA amount cannot be taken into account in calculating any profits, income or gains that—
 - (a) might arise in any period after the EEA accounting period to the surrendering company or any other person, and
 - (b) (if there were any) would be chargeable to that tax for any period after the EEA accounting period.
- (3) This subsection applies to the EEA amount so far as, for the purposes of any relevant non-UK tax, the EEA amount cannot be relieved in any period after the EEA accounting period—
 - (a) by the payment of a credit,
 - (b) by the elimination or reduction of a tax liability, or
 - (c) in any other way.
- (4) The determination as to the extent to which the EEA amount—
 - (a) cannot be taken into account as mentioned in subsection (2), or
 - (b) cannot be relieved as mentioned in subsection (3),is to be made as at the time immediately after the end of the EEA accounting period.

120 The qualifying loss condition: non-UK tax relief in another territory

- (1) This section applies to an EEA amount so far as it is not excluded by subsection (2) or (3).
- (2) The EEA amount is excluded so far as, for the purposes of any non-UK tax chargeable under the law of any territory other than the relevant EEA territory, it has been taken into account in calculating any profits, income or gains that—
 - (a) have arisen in any period to the surrendering company or any other person, and
 - (b) were chargeable to that tax for the period (or would have been so chargeable had the EEA amount not been so taken into account).

- (3) The EEA amount is excluded so far as, for the purposes of any non-UK tax chargeable under the law of any territory other than the relevant EEA territory, it has been relieved in any period—
- (a) by the payment of a credit,
 - (b) by the elimination or reduction of a tax liability, or
 - (c) in any other way.

121 The precedence condition

- (1) An EEA amount meets the precedence condition so far as no relief can be given for it in any territory which—
- (a) is outside the United Kingdom,
 - (b) is not the relevant EEA territory (as defined by section 117(2)), and
 - (c) is within subsection (2).
- (2) A territory is within this subsection if—
- (a) a company resident in the territory owns (directly or indirectly) ordinary share capital in the surrendering company,
 - (b) a UK resident company owns (directly or indirectly) ordinary share capital in the company resident in the territory,
 - (c) the surrendering company is a 75% subsidiary of the UK resident company, and
 - (d) the surrendering company is not such a subsidiary as a result of its being a 75% subsidiary of another UK resident company.
- (3) In subsection (1) the reference to relief being given in any territory is a reference to relief being given—
- (a) by taking the EEA amount (or a part of it) into account in calculating any profits, income or gains of any person chargeable to non-UK tax under the law of the territory,
 - (b) by the payment of a credit to any person under that law,
 - (c) by the elimination or reduction of a tax liability of any person under that law, or
 - (d) in any other way.
- (4) Chapter 5 explains how to determine if a company is a 75% subsidiary of another company.

Other rules, assumptions and exclusions

122 Assumptions to be made in recalculating EEA amount

Sections 123 to 126 apply for the purpose of recalculating the EEA amount at Step 3 in section 113.

123 Assumptions as to UK residence

- (1) Assume that the surrendering company is UK resident throughout the EEA accounting period.

- (2) But this does not require it to be assumed—
 - (a) that there is any change in the place or places at which the surrendering company carries on its activities (although see section 124), or
 - (b) that the surrendering company ceases to be UK resident at the end of the EEA accounting period.
- (3) Assume that the surrendering company becomes UK resident (and, therefore, within the charge to corporation tax) at the beginning of the EEA accounting period.

124 Assumptions as to places in which activities carried on

- (1) If during the EEA accounting period the surrendering company carries on a trade wholly or partly in the relevant EEA territory, assume that the trade is carried on wholly or partly in the United Kingdom.
- (2) If the surrendering company holds any estate, interest or rights in or over land in the relevant EEA territory, assume that the land is in the United Kingdom.
- (3) For the purposes of subsection (2) the reference to holding an estate, interest or rights in or over land in the relevant EEA territory is to be read so as to produce the result that most closely corresponds with that produced by applying those concepts of law in relation to a UK property business or land in the United Kingdom.
- (4) In this section “the relevant EEA territory” means—
 - (a) the EEA territory in which the surrendering company is resident, or
 - (b) (as the case may be) the EEA territory in which the surrendering company carries on a trade through a permanent establishment.

125 Assumptions as to accounting periods

- (1) Assume that an accounting period of the surrendering company begins at the beginning of the EEA accounting period.
- (2) Assume that the accounting period ends—
 - (a) when the EEA accounting period ends, or
 - (b) if earlier, at the end of 12 months.
- (3) If the accounting period ends before the end of the EEA accounting period, assume that a further accounting period then begins and so on until the EEA accounting period ends.
- (4) Assume that any further accounting period ends—
 - (a) at the end of 12 months, or
 - (b) if earlier, when the EEA accounting period ends.

126 Assumptions in relation to capital allowances

- (1) This section applies if, before the EEA accounting period, the surrendering company incurs capital expenditure on the provision of plant or machinery for the purposes of any activity.
- (2) For the purposes of Part 2 of CAA 2001 assume that the plant or machinery—
 - (a) was provided for purposes wholly other than those of the activity, and

(b) was not brought into use for the purposes of the activity until the beginning of the EEA accounting period,

and section 13 of CAA 2001 is to apply accordingly.

(3) This section is to be read as if contained in Part 2 of CAA 2001.

127 Amounts excluded because of certain arrangements

(1) An amount (or part of an amount) resulting from Step 4 in section 113 is excluded if—

- (a) it is not attributable for corporation tax purposes to any permanent establishment through which the surrendering company carries on a trade in the United Kingdom, and
- (b) the following condition is met.

(2) The condition is that the amount (or part)—

- (a) would not have resulted from Step 4 but for any arrangements within subsection (3), or
- (b) would not have arisen to the surrendering company but for any such arrangements.

(3) Arrangements are within this subsection if their main purpose, or one of their main purposes, is to secure that the amount (or part) may be surrendered for the purposes of group relief.

(4) “Arrangements” includes any agreement, understanding, scheme, transaction or series of transactions (whether or not legally enforceable).

128 Rules for recalculating EEA amount

(1) For the purposes of Step 3 in section 113 the EEA amount is to be recalculated in accordance with any provision made by or under the Corporation Tax Acts—

- (a) that applies for the purpose of calculating for corporation tax purposes losses or other amounts to which the EEA amount corresponds, or
- (b) that otherwise affects in any way the amount of those losses or other amounts that is eligible for corporation tax relief.

(2) For the purposes of subsection (1) the Treasury may by regulations provide for the modification of any provision made by or under the Corporation Tax Acts—

- (a) that applies as mentioned in subsection (1)(a), or
- (b) that otherwise affects an amount as mentioned in subsection (1)(b).

(3) Regulations under subsection (2) may make provision in relation to—

- (a) all classes of trade or business, or
- (b) any particular class or classes of trade or business.

(4) Regulations under subsection (2) may—

- (a) make different provision for different cases or different purposes,
- (b) contain incidental, supplemental, consequential and transitional provision and savings, and
- (c) make provision having retrospective effect.