



Corporation Tax Act 2010

2010 CHAPTER 4

PART 5

GROUP RELIEF

CHAPTER 2

SURRENDER OF COMPANY'S LOSSES ETC FOR AN ACCOUNTING PERIOD

Restrictions on losses and other amounts that may be surrendered

105 Restriction on surrender of losses etc within section 99(1)(d) to (g)

- (1) This section applies if the surrendering company has for the surrender period losses or other amounts within section 99(1)(d) to (g) (“relevant amounts”) that are eligible for corporation tax relief (apart from this Part).
- (2) The surrendering company may not surrender any relevant amount under this Chapter unless the total of the relevant amounts exceeds [^{F1}the profit-related threshold] .
- (3) If the total of the relevant amounts does exceed [^{F2}the profit-related threshold]—
 - (a) the surrendering company may surrender relevant amounts, but
 - (b) the total amount that may be surrendered is limited to the amount of the excess.

[^{F3}(3A) The profit-related threshold” is the sum of—

- (a) the surrendering company's gross profits of the surrender period, and
- (b) where chargeable profits of a CFC for an accounting period ending in the surrender period are apportioned to the surrendering company in accordance with step 3 in subsection (1) of 371BC of TIOPA 2010 and the surrendering company is in relation to that accounting period of the CFC a chargeable company for the purposes of step 4 in that subsection, the total of the chargeable profits so apportioned.

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(3B) Where—

- (a) an accounting period of a CFC ending in the surrender period is one to which (because of paragraph 50 of Schedule 20 of FA 2012) the repeal of Chapter 4 of Part 17 of ICTA does not apply,
 - (b) chargeable profits of the CFC for that accounting period are apportioned to the surrendering company in accordance with sections 747(3) and 752 of ICTA, and
 - (c) the surrendering company is not prevented by section 747(5) of ICTA from being chargeable to tax in respect of the CFC for that accounting period, the profit-related threshold also includes the total of the chargeable profits so apportioned.]
- (4) If the surrendering company surrenders relevant amounts, the amount surrendered is treated as consisting of—
- (a) first, donations within section 99(1)(d),
 - [^{F4}(aa) second, expenditure within section 99(1)(da),]
 - (b) [^{F5}third], losses within section 99(1)(e),
 - (c) [^{F6}fourth], expenses within section 99(1)(f), and
 - (d) [^{F7}fifth], losses within section 99(1)(g).
- (5) For the purposes of this section the surrendering company's gross profits of the surrender period are its profits for that period without any of the following—
- (a) a deduction in respect of any of the kinds of thing mentioned in section 99(1),
 - (b) a deduction falling to be made in respect of losses, allowances or other amounts of any other period (whether or not in respect of a kind of thing so mentioned), and
 - (c) a deduction falling to be made by virtue of section 63 of this Act or section 1223(3) of CTA 2009 (other amounts carried forward).

[^{F8}(5A) For the purposes of this section—

“CFC” has the same meaning as in Part 9A of TIOPA 2010, except that in subsection (3B) it means a controlled foreign company as defined by section 747(2) of ICTA;

“chargeable profits”, in relation to a CFC, is to be read in accordance with section 371BA(3) of TIOPA 2010, except that in subsection (3B) it is to be read in accordance with section 747(6) of ICTA.]

- (6) This section is subject to section 305 (oil activities: availability of group relief against ring fence profits).

Textual Amendments

- F1** Words in s. 105(2) substituted (with effect in accordance with s. 29(6)-(9) of the amending Act) by [Finance Act 2013 \(c. 29\), s. 29\(2\)](#)
- F2** Words in s. 105(3) substituted (with effect in accordance with s. 29(6)-(9) of the amending Act) by [Finance Act 2013 \(c. 29\), s. 29\(3\)](#)
- F3** S. 105(3A)(3B) inserted (with effect in accordance with s. 29(6)-(9) of the amending Act) by [Finance Act 2013 \(c. 29\), s. 29\(4\)](#)
- F4** S. 105(4)(aa) inserted (with effect in accordance with s. 22(6) of the amending Act) by [Finance \(No. 2\) Act 2017 \(c. 32\), s. 22\(4\)\(a\)](#)

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| F5 | Word in s. 105(4)(b) substituted (with effect in accordance with s. 22(6) of the amending Act) by Finance (No. 2) Act 2017 (c. 32), s. 22(4)(b) |
| F6 | Word in s. 105(4)(c) substituted (with effect in accordance with s. 22(6) of the amending Act) by Finance (No. 2) Act 2017 (c. 32), s. 22(4)(c) |
| F7 | Word in s. 105(4)(d) substituted (with effect in accordance with s. 22(6) of the amending Act) by Finance (No. 2) Act 2017 (c. 32), s. 22(4)(d) |
| F8 | S. 105(5A) inserted (with effect in accordance with s. 29(6)-(9) of the amending Act) by Finance Act 2013 (c. 29), s. 29(5) |

106 Restriction on losses etc surrenderable by UK resident

- (1) This section applies if the surrendering company is UK resident.
- (2) The surrendering company may not surrender a loss or other amount under this Chapter so far as the loss or other amount—
 - (a) is attributable to a permanent establishment through which the company carries on a trade outside the United Kingdom (see subsection (3)), and
 - (b) is, or represents, an amount within subsection (5).
- (3) A loss or other amount is attributable to a permanent establishment of the surrendering company if (ignoring this section) the amount could be included in the company's surrenderable amounts for the surrender period if those amounts were determined—
 - (a) by reference to that establishment alone, and
 - (b) by applying, in relation to that establishment, principles corresponding in all material respects to those mentioned in subsection (4).
- (4) The principles are those that would be applied for corporation tax purposes in determining an equivalent loss or other amount in the case of a permanent establishment through which a non-UK resident company carries on a trade in the United Kingdom.
- (5) An amount is within this subsection if, for the purposes of non-UK tax (see section 187) chargeable under the law of the territory in which the permanent establishment is situated, the amount is (in any period) deductible from or otherwise allowable against non-UK profits (see section 108) of a person other than the surrendering company.
- (6) Subsection (7) applies for the purposes of subsection (5) if, in order to determine if an amount is deductible or otherwise allowable for the purposes of non-UK tax chargeable under the law of a territory, it is necessary under that law to know if the amount (or a corresponding amount) is deductible or otherwise allowable for tax purposes in the United Kingdom.
- (7) The amount is to be treated as deductible or otherwise allowable for the purposes of the non-UK tax chargeable under the law of the territory concerned if (and only if) the surrendering company is treated as resident in that territory for the purposes of the non-UK tax.

107 Restriction on losses etc surrenderable by non-UK resident

- (1) This section applies if the surrendering company is a [^{F9}non-UK resident [^{F10}company within the charge to corporation tax]].

^{F11}(1A)

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- (2) ^{F12}[^{F13}... The] surrendering company may surrender a loss or other amount under this Chapter only so far as conditions A, B and C are met in relation to the loss or other amount.
- (3) Condition A is that the loss or other amount is attributable to activities of the surrendering company in respect of which it is within the charge to corporation tax for the surrender period.
- (4) Condition B is that the loss or other amount is not attributable to activities of the surrendering company that are double taxation exempt for the surrender period (see section 186).
- (5) Condition C is that—
- (a) the loss or other amount does not correspond to, and is not represented in, an amount within subsection (6), and
 - (b) no amount brought into account in calculating the loss or other amount corresponds to, or is represented in, an amount within subsection (6).
- (6) An amount is within this subsection if, for the purposes of non-UK tax chargeable under the law of a territory, the amount is (in any period) deductible from or otherwise allowable against non-UK profits of any person.
- ^{F14}(6A)
- ^{F15}(6B)
- (7) But an amount is not to be taken to be within subsection (6) ^{F16}... by reason only that it is—
- (a) an amount of profits brought into account for the purpose of being excluded from non-UK profits of the person, or
 - (b) an amount brought into account in calculating an amount of profits brought into account as mentioned in paragraph (a).
- (8) Subsection (9) applies for the purposes of subsection (6) if, in order to determine if an amount is deductible or otherwise allowable for the purposes of non-UK tax chargeable under the law of a territory, it is necessary under that law to know if the amount (or a corresponding amount) is deductible or otherwise allowable for tax purposes in the United Kingdom.
- (9) The amount is to be treated as deductible or otherwise allowable for the purposes of the non-UK tax chargeable under the law of the territory concerned.
- ^{F17}(10)
- ^{F18}(11)

Textual Amendments

- F9** Words in s. 107(1) substituted (with effect in accordance with s. 81 of the amending Act) by [Finance Act 2016 \(c. 24\), s. 76\(10\)](#) (and also with effect in accordance with [Finance \(No. 2\) Act 2017 \(c. 32\)](#), s. 39(1)(2))
- F10** Words in s. 107(1) substituted (6.4.2020) by [Finance Act 2019 \(c. 1\), Sch. 5 paras. 30, 35](#) (with [Sch. 5 para. 36](#))
- F11** [S. 107\(1A\)](#) omitted (with effect in accordance with Sch. 4 para. 5 of the amending Act) by virtue of [Finance Act 2022 \(c. 3\), s. 24\(2\)\(a\)](#)

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- F12** Words in s. 107(2) omitted (with effect in accordance with Sch. 4 para. 5 of the amending Act) by virtue of Finance Act 2022 (c. 3), s. 24(2)(b)
- F13** Words in s. 107(2) substituted (with effect in accordance with s. 30(6)-(8) of the amending Act) by Finance Act 2013 (c. 29), s. 30(3)
- F14** S. 107(6A) omitted (with effect in accordance with Sch. 4 para. 5 of the amending Act) by virtue of Finance Act 2022 (c. 3), s. 24(2)(a)
- F15** S. 107(6B) omitted (with effect in accordance with Sch. 4 para. 5 of the amending Act) by virtue of Finance Act 2022 (c. 3), s. 24(2)(a)
- F16** Words in s. 107(7) omitted (with effect in accordance with Sch. 4 para. 5 of the amending Act) by virtue of Finance Act 2022 (c. 3), s. 24(2)(c)
- F17** S. 107(10) omitted (with effect in accordance with Sch. 4 para. 5 of the amending Act) by virtue of Finance Act 2022 (c. 3), s. 24(2)(a)
- F18** S. 107(11) omitted (with effect in accordance with Sch. 4 para. 5 of the amending Act) by virtue of Finance Act 2022 (c. 3), s. 24(2)(a)

108 Meaning of “non-UK profits”

- (1) In sections 106 and 107 “non-UK profits”, in relation to a person, means—
 - (a) amounts within subsection (2), or
 - (b) amounts taken into account in calculating amounts within subsection (2).
- (2) Amounts are within this subsection if they—
 - (a) are taken for the purposes of the non-UK tax in question to be the amount of the profits, income or gains on which (after allowing for deductions) the person is charged with that tax, and
 - (b) are not amounts corresponding to, and are not represented in, the total profits of any person of any accounting period.
- (3) For the purposes of subsection (2)(b) amounts that arise from activities of a non-UK resident company that are double taxation exempt for an accounting period (see section 186) are excluded from the company's total profits of that period.

109 Restriction on losses etc surrenderable by dual resident

- (1) This section applies if in the surrender period the surrendering company is UK resident and is also within a charge to non-UK tax under the law of a territory because—
 - (a) it derives its status as a company from that law,
 - (b) its place of management is in that territory, or
 - (c) it is for some other reason treated under that law as resident in that territory for the purposes of that tax.
- (2) If condition A, B or C is met, the surrendering company may not surrender any losses or other amounts under this Chapter.
- (3) Condition A is that the surrendering company is not a trading company throughout the surrender period.
- (4) Condition B is that in the surrender period the surrendering company carries on a trade of such a description that the company's main function, or one of its main functions, consists of one or more of the following activities.

Activity 1

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Acquiring and holding shares, securities or investments of any other kind (whether directly or indirectly).

Activity 2

Making, under loan relationships, payments in relation to which debits fall to be brought into account for the purposes of Part 5 of CTA 2009.

Activity 3

Making payments which are qualifying charitable donations.

Activity 4

Making payments similar to those within Activity 3 but which are deductible in calculating the profits of the surrendering company for corporation tax purposes.

Activity 5

Obtaining funds for the purposes of, or otherwise in connection with, any of Activities 1 to 4.

- (5) Condition C is that in the surrender period the surrendering company carries on one or more of Activities 1 to 5—
- (a) to an extent that does not appear to be justified by any trade which it carries on, or
 - (b) for a purpose that does not appear to be appropriate to any such trade.

110 Restriction on surrender of losses etc from alternative finance arrangements

- (1) This section applies if the surrendering company is prevented from obtaining a deduction in respect of an amount by section 520 of CTA 2009 (provision not at arm's length: non-deductibility of relevant return).
- (2) The amount may not be surrendered under this Chapter.

Changes to legislation:

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Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 357CHA omitted by [2024 c. 3 Sch. 2 para. 14\(7\)](#)
- s. 658(1)(d)(e) inserted by [2010 c. 13 Sch. 6 para. 31](#) (This amendment not applied to [legislation.gov.uk](#). Sch. 6 para. 31 omitted (retrospective to 6.4.2010) by virtue of Finance Act 2012 (c. 14), s. 52(2) (3))