



# 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 the surrendering company's gross profits of the surrender period.
- (3) If the total of the relevant amounts does exceed those gross profits—
  - (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.
- (4) If the surrendering company surrenders relevant amounts, the amount surrendered is treated as consisting of—
  - (a) first, donations within section 99(1)(d),
  - (b) second, losses within section 99(1)(e),
  - (c) third, expenses within section 99(1)(f), and
  - (d) fourth, losses within section 99(1)(g).

*Status: Point in time view as at 17/07/2012.*

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

### **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.

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## **107 Restriction on losses etc surrenderable by non-UK resident**

- (1) This section applies if the surrendering company is a non-UK resident company carrying on a trade in the United Kingdom through a permanent establishment.
- (2) 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.
- (7) But an amount is not to be taken to be within subsection (6) 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.

## **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.

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- (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*

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).

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(2) The amount may not be surrendered under this Chapter.

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