



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

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.

Status: Point in time view as at 26/06/2020.

Changes to legislation: Corporation Tax Act 2010, Cross Heading: Conditions that must be met is up to date with all changes known to be in force on or before 16 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

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)).

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- (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).

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- (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.

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