

## **Amendment to UK group relief rules**

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### **Who is likely to be affected?**

Companies resident in the European Economic Area (EEA) with loss-making UK permanent establishments that are part of a UK group for group relief purposes.

### **General description of the measure**

The measure provides that, from 1 April 2013, there will be fewer restrictions on when EEA resident companies can surrender losses from their UK permanent establishments as group relief in the UK. The restrictions will be based on actual use of losses in any period, rather than potential future use.

### **Policy objective**

This measure will amend group relief legislation in order to conform to the Court of Justice of the European Union (CJEU) ruling in Philips Electronics UK Ltd (C-18/11), and to ensure that losses are not relieved twice, once as group relief in the UK and then again in another country.

### **Background to the measure**

The CJEU ruling in Philips Electronics UK Ltd was issued on 6 September 2012.

This measure was announced on 11 December 2012.

## **Detailed proposal**

### **Operative date**

This will have effect for losses arising on or after 1 April 2013.

### **Current law**

Section 107 Corporation Tax Act 2010 (CTA 2010) prevents a non-UK resident company from surrendering group relief for a loss made by its UK permanent establishment where that loss (or part of it) is deductible or otherwise allowable against non-UK profits of any person in any period.

### **Proposed revisions**

Section 107 CTA 2010 will be amended to prevent a non-UK resident company that is resident in the EEA from surrendering group relief for a loss made by its UK permanent establishment to the extent that the loss is used against the non-UK profits of any person in any period. Where a loss that has been surrendered is later used against non-UK profits, then the benefit of the UK group relief will be withdrawn to the extent that the loss has been used elsewhere. In both cases the amendments ensure that the losses are not relieved twice, once as group relief in the UK and then again in another country.

Section 107 CTA 2010 will not be amended for non-UK resident companies resident outside the EEA.

## Summary of impacts

Exchequer impact (£m)	2012-13	2013-14	2014-15	2015-16	2016-17	2017-18
	nil	nil	nil	nil	nil	nil
	This measure is not expected to have an Exchequer impact. The Office for Budget Responsibility has included these numbers in its forecast.					
<b>Economic impact</b>	This is not expected to have any significant macroeconomic impacts.					
<b>Impact on individuals and households</b>	There is no impact on individuals because this measure only affects EEA resident companies with loss-making UK permanent establishments that are part of a UK group for group relief purposes.					
<b>Equalities impacts</b>	No equalities impacts have been identified because this measure only affects EEA resident companies with loss-making UK permanent establishments that are part of a UK group for group relief purposes.					
<b>Impact on business including civil society organisations</b>	<p>This measure is expected to have a negligible impact on businesses and civil society organisations. The number of companies that will be affected by this measure is relatively small; these businesses will incur a negligible additional annual administrative burden as they will need to monitor whether losses surrendered as group relief in the UK are used in another territory in a later period. The full impact of this measure on businesses will be assessed through consultation and a further Tax Information and Impact Note (TIIN) will be published.</p> <p>This negligible additional burden to businesses will be considerably outweighed by the positive impacts of the measure that provides increased opportunities for EEA resident companies to surrender the losses from their UK permanent establishments as group relief.</p>					
<b>Operational impact (£m) (HMRC or other)</b>	The additional costs for HM Revenue & Customs (HMRC) in implementing this measure are anticipated to be negligible.					
<b>Other impacts</b>	<p><u>Small firms impact test</u>: it is expected that small businesses will not be affected by this measure, but we will assess this through consultation and publish a further TIIN to confirm the impact.</p> <p>Other impacts have been considered and none have been identified.</p>					

## Monitoring and evaluation

HMRC will monitor newly established UK permanent establishments and the value and frequency of their losses where they are part of a UK group, and on known permanent establishments. Behaviour of the groups with existing UK permanent establishments, that are known to be impacted by the change, will also be monitored for unexpected risks to the Exchequer.

## Further advice

If you have any questions about this change, please contact Megan Shaw on 020 7147 0212 (email: [megan.shaw@hmrc.gsi.gov.uk](mailto:megan.shaw@hmrc.gsi.gov.uk)).

**1 Loss relief surrenderable by non-UK resident established in EEA state**

- (1) Section 107 of CTA 2010 (surrender of losses etc) is amended as follows.
- (2) After subsection (1) insert –
  - “(1A) If the surrendering company is established in the EEA (within the meaning of section 134A), it may surrender a loss or other amount under this Chapter only so far as conditions A and B are met.  
Subsection (6A) imposes restrictions on a surrender under this subsection.”
- (3) In subsection (2) for “The” substitute “In any other case, the”.
- (4) After subsection (6) insert –
  - “(6A) A loss or other amount may not be surrendered by virtue of subsection (1A) if and to the extent that it, or any amount brought into account in calculating it, corresponds to, or is represented in, amounts within subsection (6B).
  - (6B) 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) deducted from or otherwise allowed against non-UK profits of any person.”
- (5) In subsection (7), after “subsection (6)” insert “or (6B)”.
- (6) The amendments made by this section have effect in relation to accounting periods beginning on or after 1 April 2013.
- (7) But for this purpose an accounting period beginning before, and ending on or after, 1 April 2013 is to be treated as if so much of the period as falls before that date, and so much of the period as falls on or after that date, were separate accounting periods.
- (8) An apportionment for the purposes of subsection (7) must be made in accordance with section 1172 of CTA 2010 (time basis) or, if that method produces a result that is unjust or unreasonable, on a just and reasonable basis.

**EXPLANATORY NOTE**

**LOSS RELIEF SURRENDERABLE BY NON-UK RESIDENT  
ESTABLISHED IN EEA STATE**

**SUMMARY**

1. This clause amends the restrictions on when companies resident in the European Economic Area (EEA) can surrender losses attributable to their UK permanent establishments as group relief from Corporation Tax in the UK. Currently, companies resident in the EEA are subject to the same rules as non-EEA resident companies. From 1 April 2013, a new restriction will apply for EEA resident companies based on whether their losses are relieved in another country in any period, rather than on whether they could potentially be relieved in another country.

**DETAILS OF THE CLAUSE**

2. Subsection (1) is introductory and confirms that section 107 Corporation Tax Act (CTA) 2010, which restricts the losses and other amounts that may be surrendered as group relief by a non-UK resident company, is amended as follows.
3. Subsection (2) provides that where the surrendering company is established in the European Economic Area (EEA) then (as before) it may surrender losses and other amounts that meet Conditions A and B, but they no longer need to meet Condition C. Instead these losses are subject to a new restriction, set out at subsection (4) of this clause.
4. The effect of subsection (3) is that for a non-UK resident company that is not established in the EEA, section 107 CTA remains unchanged.
5. Subsection (4) inserts a new restriction for a company established in the EEA. It may not surrender losses and other amounts that meet conditions A and B if and to the extent that they are deducted from or allowed against non-UK profits of any person.
6. Subsections (6) to (8) provide that this amendment applies to losses arising on or after 1 April 2013. Where an apportionment is needed to work out the losses that arise from this date, companies should use a time apportionment unless that produces an unjust or unreasonable result.

**BACKGROUND**

7. This clause derives from a recent decision of the Court of Justice of the European Union (CJEU) in the case of *Philips Electronics UK Ltd* (C-18/11).
8. If you have any questions about this change, or comments on the legislation, please contact Megan Shaw on 020 7147 0212 (email: [megan.shaw@hmrc.gsi.gov.uk](mailto:megan.shaw@hmrc.gsi.gov.uk)).