

International tax planning in a recession

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A period of recession brings with it a renewed emphasis on the importance of loss relief. In the international context falling profits, or the incurring of actual trading losses, focuses the attention of advisers on what relief is available for losses both in the particular territory where the operations are carried on and cross border to the territory of residence of the operating company or its parent company.

Can the losses be carried forward in the particular territory and if so against what profits can they be offset in future? What is the limitation period, if any, on the carry forward of losses? How can the adviser ensure that these losses can be utilised within the limitation period? Where the loss arises in a branch there may be the possibility of relief for the loss in the country where the branch is located as well as in the country of the head office.

Is there any provision for the carryback of losses? If so will the tax repayments arising result in the receipt of interest on tax overpaid in earlier periods? And how long will the repayments take to be received? Will the cash flow advantage of carryback be lost because of delays in agreeing figures? Carrying back losses against earlier years' profits may result in immediate repayment of tax but if dividends have been paid out of those profits to the parent company in another country, or those profits have been taxed under Controlled Foreign Company Regulations, then the repayment of tax may simply give rise to additional tax in the home country because the foreign tax credit will have been reduced.

If loss reliefs are limited, are there other reliefs which can be disclaimed so as to reduce the amount of losses with those reliefs being claimed in a future period? Can certain write-downs be deferred? Are there any sources of income which can be accelerated so as to reduce a loss to a minimum? Have there been changes in the rate of tax so that carry forward or carryback produces relief at a different rate from that applicable in the current year?

Where there is more than one group company operating in a particular territory, can losses of that company be set off against profits of other companies in that territory which are within the same group? Can a consolidated return be filed? What is the qualification for membership of a group or for consolidation? Where no loss relief is available, or perhaps even when it is, can effective relief be claimed by writing down the value of the shareholding in the loss-making company and claiming relief for the depletion in value?

The erosion of equity because of trading losses arising may give rise to thin capitalization issues. This in turn leads to consideration of different methods of injecting additional capital. Will such injections be regarded as a subvention to offset the losses with the result that these are eliminated for tax purposes?

The answers to these questions in particular cases are quite likely to confirm that in a number of instances group structures are set up in a form which assumes that the operations will be profitable. It is only when losses begin to be suffered that it is then found that, because of this assumption, the structure is unsuitable for optimum loss relief and a good deal of care and thought has then to be given to alternative ways of gaining effective relief for a loss and avoiding an increase in the group's effective tax rate.