



The Law Society

Amendments to UK Group Relief Rules

Response of the Law Society of England and Wales

February 2013



Amendments to UK Group Relief Rules

Comments of Tax Law Committee of the Law Society of England & Wales

Introduction

1. The Law Society is the representative body for over 166,000 solicitors in England and Wales. It negotiates on behalf of the profession, and lobbies regulators, Government and others.
2. This response has been prepared on behalf of the Society by members of the Tax Law Committee, which is made up of senior and specialist tax lawyers practising in this field.
3. The Law Society welcomes this opportunity to comment on the draft legislation amending UK Group Relief Rules published on 11 December 2012.

Compatibility with EU Law

4. The Law Society welcomes the relaxation of UK Group Relief Rules where the UK branch of a company established in the EEA has losses available for surrender to another group member. However, the Law Society is concerned that even the amended rules will not be compatible with European law.
5. *In the Commissioners for Her Majesty's Revenue and Customs v. Philips Electronics UK Limited* (Case C-18/11) the European Court ruled that "Article 43EC must be interpreted as meaning that where, under the national legislation of a member state, the possibility of transferring, by means of group relief and to a resident company, losses sustained by the permanent establishment in the member state of a non-resident company is subject to a condition that those losses cannot be used for the purposes of foreign taxation, and where the transfer of losses sustained in that member state by a resident company is not subject to any equivalent condition, such provisions constitute a restriction of the freedom of a non resident company to establish itself in another member state." That restriction could not be justified by overriding reasons in the public interest based upon the objective of preventing the double use of losses or the objective of preserving a balanced allocation of the power to impose taxes between the member states or by a combination of those two grounds. The restriction therefore had to be disapplied.
6. The amending legislation substitutes, where the surrendering company is established in the EEA, for the requirement that the UK branch loss should not be deductible from or otherwise allowable against non UK profits of any person a requirement that the loss should not be deducted from or otherwise allowed against non UK profits of any person. We recognise that the new restriction is much less restrictive than the previous version. However, the effect of the change is nevertheless to impose upon the UK branch of an EEA established company a restriction on the surrender of losses which is not imposed upon a UK resident company. We therefore consider that the reasoning in *Philips* is equally applicable to the new restriction.
7. In our view, section 107 CTA 2010 should be amended so that it does not apply where the surrendering company is established in the EEA.