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HMRC internal manual

Corporate Intangibles Research and Development Manual

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CIRD42115 - Intangible assets: company reorganisations: advance clearances: common reasons for refusal

Clearance under S831 will only be granted where HMRC is satisfied that both:

- the relevant transactions will be effected for genuine commercial reasons; and
- they do not form part of a scheme or arrangement of which the main purpose, or one of the main purposes, is the avoidance of

liability to corporation tax, income tax or capital gains tax.

A common reason for clearance not being granted is that the reorganisation is proposed with a view to the sale or future sale of all or part of the business's intangible assets but the sale arrangements haven't been finalised. In circumstances where the reorganisation is part of a wider scheme, for example a future sale, we will not be able to consider the clearance until all the transactional steps are known.

Reorganisations with a view to a sale of intangible assets

The purpose of S818 is to allow a business to be reorganised and to transfer intangible assets on tax neutral terms. This provides a similar advantage to S775 for transfers between two companies who are part of the same group.

Tax-neutral transfers can, however, create tax avoidance opportunities. A common tax avoidance arrangement is often referred to as 'enveloping' or 'the envelope trick'. This involves an asset being transferred between two companies on a tax neutral basis. The shares in the asset holding company are then sold. In this scenario the intangible asset has been sold within the 'envelope' company and so escapes from any taxable credit (or debit) under Chapter 4.

For tax neutral transfer made under S775, such arrangements are countered by the degrouping charge at S780.

A tax neutral reorganisation using S818 has the same potential as S775 to be used for 'enveloping' and avoiding a tax charge on the realisation of a business's intangible assets. This is the situation if a S818 reorganisation is being undertaken principally to effect the disposal of intangible assets, through the sale of one of the demerged companies to a third party. Where HMRC have

concerns that this is the case then clearance under S831 will be refused.

Note that a degrouping charge will not arise if, on or after 7 November 2018, a company leaves a group as a result of a share disposal that would qualify for the Substantial Shareholding Exemption in Paragraph 1 Schedule 7AC TCGA 1992. In particular, this requires that the company is a trading company (or the parent of a trading sub-group), with no substantial non-trading activities. This exception is provided by CTA09/S782A (introduced to the degrouping charge rules by FA19/s26 . When reviewing clearance applications HMRC will therefore have regard to whether the CTA09/S782A exception would be available to prevent degrouping charges from arising.

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