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HMRC internal manual

Corporate Intangibles Research and Development Manual

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CIRD48130 - Intangible assets: avoidance: tax-driven transactions: whether tax avoidance main object

Introduction

Arrangements come within the anti-avoidance provision if their main object, or one of their main objects, is to achieve a reduction in taxable profits in the way described in [CIRD48110](#) (<https://www.gov.uk/hmrc-internal-manuals/corporate-intangibles-research-and-development-manual/cird48110>). Apart therefore from the

(unusual) case where the sole object of arrangements is tax avoidance, it will be necessary to compare any tax avoidance object with the other objects of transactions to determine whether the tax avoidance object is a 'main' object.

In any business carried on with a reasonable degree of financial sophistication, the tax consequences will be taken into account in planning transactions. But it does not follow that, simply because the tax due on different means to some business end varies significantly, tax considerations represent a 'main' object or purpose in choosing a means which causes the least tax to be paid.

Judicial guidance

The Courts have long recognised this point. In *CIR v Brebner* (43TC705) at page 718 Lord Upjohn, in considering another anti-avoidance rule, said:

“...when the question of carrying out a genuine commercial transaction, as this was, is considered the fact that there are two ways of carrying it out - one by paying the maximum amount of tax, the other by paying no, or much less, tax - it would be quite wrong as a necessary consequence to draw the inference that in adopting the latter course one of the main objects is, for the purposes of the section, avoidance of tax”.

Situations not targeted

Similarly, this anti-avoidance rule is not aimed at straightforward commercial decisions just because they are structured in a tax effective way. For example, a company may exploit an intangible asset by using it in its business, by licensing it on one way or another, or the company can sell the asset, in whole or in part. The tax treatment of the various options may well bear on which option the company chooses but that does not make tax

avoidance a main purpose of the arrangements the company decides to adopt.

Another example of arrangements that are not a target of the anti-avoidance provision could involve a commercial decision to sell a business. If the company sells the assets directly to its purchaser substantial taxable credits would arise. Its directors therefore decide to sell the shares in its subsidiary that carries on the business and the capital gain is exempt under the substantial shareholding rules. In these circumstances the sale of the shares would not by itself be regarded as a scheme or arrangement having as a main object the elimination of taxable credits on the realisation of the intangibles.

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