HMRC - CFM98010 - i-Avoidance: Anti-Avoidance

TIOPA10/S461

The corporate interest restriction contains a regime anti-avoidance rule (RAAR) that has effect for the purpose of counteracting tax advantages that might arise from certain avoidance arrangements. The arrangements must result in a tax advantage as a result of a company:

eliminating a restriction of tax-interest expense, or reducing the amount of a restriction;

reactivating amounts of disallowed tax-interest expense, or increasing the amount of a reactivation; or

changing the timing of any restriction or reactivation of tax-interest expense amounts so that it is made in different accounting period from that in which it would otherwise be made.

The RAAR will apply only if the arrangement gives rise to a tax advantage. Tax advantage is defined in s461(7) and comprises

a relief from tax or increased relief from tax;

a repayment of tax or an increased repayment of tax;

the avoidance or reduction of a charge to tax or an assessment to tax;

the avoidance of a possible assessment to tax;

a deferral of a payment of tax or advancement of a repayment of tax; and

the avoidance of an obligation to deduct or account for tax.

The definition brings in all taxes that are chargeable as or treated as if they are corporation tax, including the CFC charge, the bank levy, and surcharges such as the banking surcharge. It is also includes the Diverted Profits Tax.

In forming a view on whether the tax advantage test is met, HMRC would take into account all of the circumstances around a particular arrangement.

If the tax advantage that might arise from an arrangement is neutralised under other tax rules then the RAAR will not apply. For example, it is possible that the deduction-buying rules in CTA10/PT14 would apply to certain changes of ownership of a company if they occur as part of an arrangement that has a main purpose of gaining access to restricted interest as a future deduction.

The legislation applies only to arrangements where a main purpose is to secure a tax advantage. The legislation does not define what is meant by main purpose or one of the main purposes. These expressions are to be given their normal meaning as ordinary English words. They have to be applied objectively, having regard to the full context and facts.

It will usually be clear whether trying to obtain a tax advantage is the main purpose of a particular arrangement. Such would be the case, for example, where the arrangement would not have been carried out at all were it not for the opportunity to obtain the tax advantage, or where any non-tax objective was secondary to the benefit of obtaining the tax advantage.

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