HMRC - CTM06260 - Relevant Liabilities Restriction - Particular Aspects

Intra-group liabilities

The relevant liabilities restriction was introduced to counteract avoidance as explained in CTM06250. However, the restriction applies to all transfers of trade which fall under CTA10/S940A. Note in particular that there is no exclusion in CTA10/S945 (2) for liabilities connected with transfers within a stable group of companies, even though all third party creditors may be paid in full. This means that where a predecessor has an outstanding debt to a fellow group company at the time of the transfer, which is not transferred with the trade, that debt will count as a liability for the purposes of the restriction.

Part-trades and apportionment

The relevant liabilities restriction is adapted to part-trades by looking at the assets and liabilities which relate to the part-trade transferred. It is necessary to:

identify assets and liabilities, and

apportion these between the trading activities that were transferred and those that were retained.

Any reasonable method of apportionment may be used - CTA10/S952 refers to ‘just and reasonable apportionments are to be made of receipts, expenses, assets and liabilities’. The object is to establish the liabilities and assets that relate to the part-trade transferred were not transferred to the successor. If all the liabilities that relate to the part-trade are transferred with it, the restriction does not apply.

Example 2 of CTM06280 shows the relevant liabilities restriction where a part-trade is transferred.

Conversion of liability

The relevant liabilites restriction may be eliminated or reduced if, before the transfer, the predecessor company issues further share capital, or waives or releases liabilities.

In the latter case, and where the amounts waived or released before 22 April 2009 were trading account items CTA09/S94 may apply. CTA09/S94 is about debts deducted and subsequently released - see BIM40200+.

Trade debt releases occurring on or after 22 April 2009 are within the rules on deemed loan relationships in CTA09/PART6. CTA09/S481 (3)(d) applies - see CFM41060.

CTA10/S946 restricts the ability of companies to eliminate or reduce the relevant liabilities restriction by other forms of restructuring such as the conversion of a liability to share capital. Such debt restructuring that has taken place within a twelve-month period prior to in the date on which the predecessor ceased trading is disregarded for the purposes of computing the relevant liabilities restriction.

Interaction with CTA10/S953

CTA10/S953 applies where a transfer of a trade or part-trade between two companies never meets the common ownership test, but within the next two years there is a further transfer to a third company (see CTM06070).

Where CTA10/S953 applies, any relevant liabilities restriction is operated on both:

the original transfer of trade to the unrelated second company, and

the transfer from the second to the third company.

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