HMRC - CTM61585 - Arrangements Conferring Benefit On Participators: TAAR: Benefit Conferred: Partnerships

CTA10/S464A

Whilst the legislation is broadly targeted, there are certain partnership scenarios to which it is specifically intended to apply. The use of these partnership arrangements (not chargeable in many cases by either CTA10/S455 (even as amended), nor CTA10/S459) was becoming increasingly common. However, Section 464A should be read as including, rather than being restricted to, the types of value extraction described below, even in the partnership context.

HMRC accept that in many cases capital contributions to partnerships or profits left undrawn by a company partner in a partnership do not, on the facts, amount to loans/advances/debts within the meaning of Sections 455/459. In this context the treatment of the amounts in the company accounts is not determinative of the issue. Where the facts indicate that a capital contribution or undrawn profits is not a loan/advance or debt, then neither Section 455 nor Section 459 can apply where the individual partners who are also company participators draw on those funds in the partnership, for example by overdrawing their capital or current accounts with the partnership.

A typical structure/scenario would involve, for example:

a company, C, with a sole participator, M

M and C are also the sole members of an LLP, S

C, the company member, gets 99% of the profits of S

M receives a 1% profit share and has £5000 accumulated profits at his disposal in his capital/current account.

The profits allocated to C are taxed at the corporation tax rates which are substantially lower than the higher income tax rates/NIC which might otherwise have been applied to those profits. C does not, however, draw out its profit share; the funds are left in the partnership.

If the profits of the partnership are £100,000, M will get a share of £1,000, giving him a total of £6,000 on which to draw. However M draws £100,000 from the partnership, creating an overdrawn capital/current account.

In this case, although Section 455 will not apply because there is no loan, it is highly likely that S464A will apply to give rise to a tax charge of 25% of the amount of M’s overdrawn capital/current account (here £94,000).

The company funds left undrawn in the partnership have ended up in the hands of M. There has been a benefit conferred on M and there are arrangements - a complicated structure has been established and M has not paid income tax on the amount drawn. This would also be the case where C made a capital contribution rather than leaving its profits undrawn.

Where C took its profit share but then loaned the funds back to S, CTA10/S455 as amended by FA13, rather than CTA10/S464A, will apply whether or not M extracted any money.

CTA10/S464A will not apply to overdrawn capital/current account balances that existed before 20 March 2013; it can only apply to such extractions of value after that date. However, the legislation specifically applies to arrangements on or after 20 March 2013. So, any drawings from partnerships on or after 20 March 2013 by participator-partners of capital or contributions/profits left undrawn prior to that date may still fall within the charge

Particular care is needed around the 20 March 2013 date. If a partnership has 31 March 2013 accounting date, the 2013 profit share cannot be taken into account in calculating whether or not Section 464A might apply until after the year end. Thus, if on 19 March 2013 the account is £50,000 overdrawn, any further withdrawal could trigger CTA10/S464A if the company is party to any tax avoidance arrangements in the period from 20 March 2013.

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