HMRC - CTM80055 - Avoidance Of The Distributions Legislation

ICTA88/S254 (1), (2), (3) and (4) aim to prevent avoidance of the distributions legislation at ICTA88/S209 onwards. The avoidance targeted is where one company in a 90% group makes a distribution out of its assets in respect of shares or securities of another member of the same group. The company does this to avoid the payment or transfer of value being caught as a distribution under ICTA88/S209.

A principal company (that is, a company of which another company is a subsidiary) and all its 90% subsidiaries form a ‘90% group’. A ‘90% subsidiary’ is defined in ICTA88/S838 (1)(c) as one in which 90% of the ordinary share capital (defined in ICTA88/S832 (1)) is directly owned by another body corporate.

ICTA88/S254 provides that, in relation to a company which is a member of a 90% group:

‘in respect of shares in a company’ means in respect of shares of that company or any other company in the group (CTM15120),

and

‘in respect of securities of a company’ means in respect of securities of that company or any other company in the group (CTM15130).

ICTA88/S254 also provides that, in relation to a company, which is a member of a 90% group, ‘distribution’ includes anything distributed out of the assets of the company:

in cash,

or otherwise in respect of:

shares in another company in the group

or

securities of another company in the group.

The parent of a 90% group may undertake to issue loan stock to the holders of preference shares in one of its subsidiaries in exchange for the cancellation of those preference shares. ICTA88/S209 (2)(c), (2)(d) and (2)(e) (CTM15450and CTM15500) apply if the loan stock is not issued wholly for new consideration.

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