HMRC - CTM80060 - Transfers Of Assets Or Liabilities

ICTA88/S209 (4) provides that a benefit derived by a shareholder from a transfer of assets or liabilities:

by the company of which he or she is a member to the shareholder, or

by the shareholder to the company of which he or she is a member,

is a distribution.

But ICTA88/S209 (5) relaxes this rule where the shareholder is a company, and certain conditions are met, so that any benefit derived is not a distribution. Where there is a transfer of assets or liabilities which gives rise to a benefit and:

the shareholder receiving the benefit is a company,

and

both the conferring and the receiving companies are resident in the UK,

and

the company conferring the benefit is a subsidiary of the company receiving the benefit,

or

both companies are subsidiaries of a third company also resident in the UK,

the amount of the benefit is not a distribution under ICTA88/S209 (4).

An amount, which is not a distribution under Section 209 (4), because it meets the conditions in Section 209 (5), is not a distribution under ICTA88/S209 (2)(b) (see CTM15350).

The definition of ‘subsidiary’ for this purpose is in ICTA88/S209 (7), which states that in calculating whether a company has a 51% subsidiary, it shall be treated as not being the owner:

of any share capital owned directly by a company if a profit on the sale of the shares would be treated as a trading receipt of that company,

of any share capital it owns indirectly and which is owned directly by a company if a profit on the sale of the shares would be treated as a trading receipt of that company,

of any share capital which it owns directly or indirectly in a company not resident in the UK.

There is guidance on the chargeable gains aspect of such transactions at CG45120 and atCTM15310 on certain transactions between companies.

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