HMRC - CTM80181 - Groups: Exclusion Of Certain Arrangements

CTA10/Ss155A and 155B

Some arrangements are put in place for commercial reasons in order to deal with changes in circumstance of the companies involved in the group or consortium. For arrangements entered into in accounting periods beginning on or after 1 March 2012 CTA10/Ss155A and 155B provide that CTA10/S154 and S155 does not apply to certain enabling arrangements. For arrangements entered into in earlier accounting periods, ESC C10 {#} ensured that such arrangements did not fall within S154 (or CTA10/S155 for groups; see CTM80205).

Joint venture companies

CTA10/S155A provides that certain arrangements entered into by a joint venture company are not to be treated as arrangements within CTA10/S154(3) or S155(3). These arrangements are where an agreement provides for the transfer of shares or securities in the joint venture company, or a constitutional document regulating the affairs of the joint venture company provides for the suspension of a member’s voting rights, as a result of one or more of the following contingencies occurring:

the voluntary departure of a member,

the commencement of the liquidation, administration, administrative receivership or receivership of a member (or equivalent proceedings under the law of any other country),

a serious deterioration in the financial condition of a member,

a change of control of a member,

a default by a member in performing its obligations under any agreement between the members or with the joint venture company,

an external change in the commercial circumstances in which the joint venture company operates such that its viability is threatened,

an unresolved disagreement between members, and

any contingency of a similar kind to that mentioned in any of paragraphs (a) to (g) which is provided for, but not intended to happen, when the arrangements in question are entered into.

These enabling arrangements are not excluded from S154 and S155, however, where a member could (alone or with connected persons) dictate the terms or timing of the transfer of shares or securities or the suspension of a member’s voting rights in advance of one or more of the contingencies occurring (CTA10/S155A(4)).

Mortgage arrangements

CTA10/S155B provides that certain mortgage arrangements entered into by a company are not to be treated as arrangements within CTA10/S154(3) and S155(3), where they are:

a mortgage, secured by way of shares or securities in the company, which on default or the happening of any other event allows the mortgagee to exercise its rights against the mortgagor, and,

the mortgagee has not exercised its rights against the mortgagor.

These mortgage arrangements are not excluded from S154 and S155, however, where the mortgagee:

possesses greater rights in respect of the shares or securities that are the subject of the mortgage than it requires to protect its interest as mortgagee (CTA10/S155B (2)(a), or,

could (alone or with connected persons) dictate the terms or timing of the default or the happening of any other event which allows the mortgagee to exercise its rights against the mortgagor (CTA10/S155B (2)(b)).

For the purposes of CTA10/S155B “mortgage” is not restricted to UK mortgages.

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