HMRC - CTM80600 - Arrangements To Transfer The Company Owned By A Consortium To Another Group Or Consortium

CTA10/S155

Even though a company may otherwise satisfy the conditions for:

surrender of relief to, or

claim to relief from,

the members of a consortium, the conditions are deemed not to be satisfied for the accounting period of claim if certain ‘arrangements’ are in existence at a time material to the claim. ‘Arrangements’ for this purpose are specified in CTA10/SS155(3) and 156(2) and are described in CTM80605 onwards.

In general, the type of arrangements that CTA10/S155 aims at are those that would permit the company held by a consortium to switch to a group situation; however CTA10/S155 applies in every case where arrangements exist. There is no requirement for a purpose of the arrangements to include a tax advantage.

The term ‘arrangements’ means arrangements of any kind whether in writing or not. Therefore the legislation covers both arrangements which are:

binding on the parties,

and

less formal in character and not necessarily binding.

Arrangements may be a matter of specific agreement or inherent in the capital structure of a company. Examples of inherent arrangements are where:

the majority of the voting rights in a company are held other than by the purported parent, or

such majority control, though not at present so held, can be acquired through the exercise of conversion rights attaching to the company’s loan or debenture stock.

The definition of ‘control’ for the purposes of CTA10/S155 is in CTA10/S1124. S1124 does not define ‘control’ merely in terms of direct shareholdings and voting rights in the company concerned. If they affect the ‘control’ situation:

the shareholdings and voting rights in any company,

and also

the powers conferred by the documents regulating any company,

may also have to be considered.

In order to determine whether relevant arrangements exist, it will be necessary to consider:

the Memorandum and Articles of Association of the company,

any other document regulating the company,

and

the various documents relating to loans made to the company.

Where a company other than the parent company holds the shares, etc, it may also be necessary to consider the shareholdings, etc, of that company.

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