HMRC - CTM80605 - Arrangements: Disqualifying Relief

CTA10/S155

Under CTA10/S155(2) any company that, either as a trading company or a holding company, would otherwise be able to:

surrender relief to, or

claim relief from,

the members of a consortium, is debarred from doing so if both the conditions in CTA10/S155(2)(a) and (b) apply in any accounting period.

This condition is that the company has trading losses or other amounts that would be available for surrender for group relief purposes, and

This condition is that there are arrangements that have any of the effects in CTA10/S155(3). This is subject to S155A and S155B, which provide that certain commercial arrangements are not arrangements within S155(3). There is more guidance on these excluded arrangements at CTM80620.

Effect 1 in CTA10/S155(3) is that the company (or a successor CTM80615) could, at some time during or after the end of that accounting period, become a 75% subsidiary of a third company (CTM80615).

Effect 2 in CTA10/S155(3) is that:

any person who owns less than 50% of the ordinary share capital of the company, or

any persons who together own less than 50% of the ordinary share capital of the company,

has or together have, or could at some time during or after the end of that accounting period obtain, control of the company.

Effect 3 in CTA10/S155(3) is that any person, except a holding company of which the company is a 90% subsidiary, either alone or together with connected persons:

holds or could obtain,

or

controls or could control,

the exercise of not less than 75% of the votes at a general meeting of the company in that accounting period or in any subsequent accounting period. See the final subparagraph of CTM80600 in relation to the meaning of ‘control’.

For the purpose of Effect 3 in CTA10/S155 the phrase ‘connected persons’ is defined by CTA10/S1122, with the omission of subsection (4).

Effect 4 in CTA10/S155(3) is that a third company (CTM80615) could begin to carry on, at some time during or after the end of that accounting period, the whole or any part of a trade that, at any time in that accounting period, is carried on by the company (which is a trading company within the meaning of CTA10/S185(1)). The third company could do so either as a successor (CTM80615) of:

that trading company,

or

another company which is not a third company but which, at some time during or after the end of that accounting period, has begun to carry on the whole or any part of that trade.

The word ‘could’ in relation to certain effects means that the legislation encompasses arrangements, which, if they were put into effect, would have one or other of those effects. It is not necessary that there should be any present intention to put the arrangements into effect. The fact that the arrangements could only be given effect if two or more parties agreed to act jointly does not affect the position.

This guidance use the terms ‘enabling’ arrangements and ‘direct’ arrangements. They have no precise meaning in terms of the legislation and arrangements should not be distinguished in this way in correspondence with companies or their advisers.

For ‘enabling’ arrangements see CTM80620. These are arrangements which confer rights which are not necessarily intended to be exercised immediately but are available to be exercised at some future date to suit the convenience of the parties.

For ‘direct’ arrangements see CTM80625. These are arrangements that represent a stage in the process of negotiating an intended transaction.

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