HMRC - CTM80915 - Election - Under ICTA88/S247

The parts of ICTA88/S247 relating to payments of dividends were repealed from 6 April 1999 onwards. The remainder of Section 247 was repealed by FA01 in relation to payments of interest or charges made after 11 May 2001.

Previously, an election under:

ICTA88/S247 (1) CTM80905, or

ICTA88/S247 (4) CTM80910,

could be made only by a body corporate where both the paying and the receiving companies were resident in the UK.

The definition of a company owned by a consortium has changed several times. In 1965, a company was owned by a consortium if 75% or more of its ordinary share capital was beneficially owned between them by five or fewer companies resident in the UK. Each of those companies had to own beneficially not less than 5% of that capital.

The ‘five or fewer’ requirement was dropped for dividends etc paid after 31 December 1984.

Several amendments were introduced for dividends etc paid on or after 27 July 1989. This was because the rules for consortium election purposes were less restrictive than those for group relief.

The companies which own the company owned by the consortium and which satisfy the other conditions in this paragraph are called the ‘members’ of the consortium.

The definition of a company owned by a consortium by reference to ordinary share capital allowed elections to be manipulated - this is explained in CTM80085. The manipulation was by the creation of shares which satisfied the definition of ordinary share capital for the purposes of a Section 247 election. ICTA88/S247 (9)(c), introduced by FA89, amended the definition, it requires that none of the member companies:

beneficially owns less than 5% of the ordinary share capital,

would be beneficially entitled to less than 5% of any profits available for distribution to equity holders of the company, or

would be beneficially entitled to less than 5% of any assets of the company available for distribution to its equity holders on a winding-up.

ICTA88/S247 (9A) says that the group relief anti-avoidance provisions of ICTA88/SCH18 (CTM81000 onwards) apply for the purpose of Section 247 (9)(c).

ICTA88/S247 (1A), also introduced by FA89, prevents an election where one of the members of the consortium owns 75% of the share capital of the consortium, it provides that:

if a company is a 75% subsidiary of any other company, or

arrangements of any kind exist by virtue of which it could become such a subsidiary,

then it will not fulfil Section 247 (1)(b). The Board’s view of what constitutes ‘arrangements’ is set out at SP3/93, ESCC10 and CTM80205.

Although a paying company may be substantially owned or controlled by a consortium, an election cannot be made in respect of dividends or other payments received by a company on any investments:

if a profit on the sale of the investment would be a trading receipt of the company,

or

if the company receiving the dividends is an exempt person.

Guidance on the effect of the winding-up of a company on elections is at CTM36125.

Previous page

Next page