HMRC - CTM81245 - Arrangements Regarding Control

ICTA88/S240 (11)(a)

A company may at any relevant time satisfy the tests in (a), (c) and (d) of CTM81240. But there may be in existence arrangements (see CTM81270 to CTM81280) under which some person or persons have, or could obtain, control of that subsidiary but not of its parent. If there are such arrangements in existence, then the company is not a subsidiary for the purposes ofICTA88/S240. ‘Control’ for this purpose is defined as in ICTA88/S840.

An example of the existence of such arrangements is where the majority of the voting rights in the subsidiary company are held by a person or persons other than the parent company. Another example is where a person or persons, other than the parent company, hold loan stock which is convertible into shares that will carry the majority of the voting rights.

However ICTA88/S840 does not merely define ‘control’ in terms of voting rights, or interms of direct holdings. So, to determine whether such arrangements exist, it is necessary to consider:

the Memorandum and Articles of Association of the company,

and

any other documents regulating the company,

and

the various documents that relate 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 shareholders etc of that other company.

There is guidance at CTM80205 on SP3/93 and ESCC10. You have to follow these when you determine whether ‘arrangements’ are in existence.

Previous page

Next page