HMRC - STSM042470 - Reliefs: Section 77A – Arrangements That Are Not Disqualifying Arrangements

FA86/S77A(3) provides that share for share exchanges mentioned in FA86/77(3) and relevant merger arrangements ( STSM042500) are not disqualifying arrangements.

However, FA86/S77A(5) provides that where share for share exchanges or “relevant merger arrangements” are part of a wider scheme or arrangement and that scheme or arrangement includes other arrangements which are not share for share exchanges or “relevant merger arrangements” , those other arrangements are disqualifying arrangements.

Example

Four shareholders own 25% each of three trading companies. A third party buyer wants to acquire 80% of the value of the 3 companies. For commercial reasons the third party buyer insists on purchasing 80% of a group structure rather than 80% of the individual companies. To facilitate this, the shareholders of the target companies insert a new holding company (the acquiring company). Following a share for share exchange between the acquiring company and the shareholders of the target companies, the third party buyer purchases 80% of the issued share capital in the acquiring company.

Assuming all the other conditions for FA86/S77 relief are met the “disqualifying arrangements” are not the share exchange itself. The “disqualifying arrangements” are the arrangements (in existence at the time of the share exchange) for the third party buyer to purchase 80% of the acquiring company.

In this example there is a “particular person” identified who will, under the arrangements, take control of the acquiring company. No relief under FA86/S77 is applicable in these circumstances.

\_ ‘\_Arrangements’ includes any agreement, understanding or scheme (whether or not legally enforceable).

“Control” is to be read in accordance with CTA2010/S1124

STSM042460 provides information on what are ‘disqualifying arrangements’.

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