HMRC - STSM042490 - Reliefs: Section 77A – Initial Public Offering And Underwriters

Floating a company is the legal process by which a company goes from being privately to publicly held. A company that is publicly held is one that has raised capital for its business activities by offering for sale a percentage of its shares to the general investing public on a stock exchange. The initial sale of existing and/or new shares to the public is called an Initial Public Offering (IPO).

As a private limited company cannot offer its shares to the public, a company wishing to float must become a public limited company (plc). Rather than converting to a plc, it is sometimes preferable to incorporate a new plc and insert it by way of a share for share exchange as a new parent company for the existing private company, then to float the new plc. FA86/S77 relief will typically be claimed on that share for share exchange, with the plc being the “acquiring company”

 “Disqualifying arrangements” for FA86/S77A(2) exist if it is reasonable to assume that the purpose, or one of the purposes, of the arrangement is to secure that a “particular person” or “particular persons together” will obtain control of the acquiring company. This would not be the case in a normal IPO where a wide range of individuals and entities are likely to become shareholders of the plc. Even if the result of an IPO is that the shareholders as a whole obtain control of the acquiring company, it will not normally be reasonable to assume that one of the purposes of the IPO was for specific particular persons to obtain control. A normal IPO is an offer to the public and not only to particular persons.

Only if an IPO structure is used to enable particular persons to obtain control of the acquiring company would the share for share exchange be caught by FA86/S77A(2). This is very unlikely in practice. In this situation, full details of the proposed arrangements and transaction(s) along with draft documentation should be submitted to HM Revenue & Customs, Stamp Taxes, Birmingham for advice.

Underwriters

 Where shares are offered for sale to the public it is customary for the company or vendor shareholders to enter into an agreement with a financial institution which agrees to purchase shares not taken up by the public. This underwriting function can in fact be performed by the issuing house sponsoring the offer for sale by agreeing to procure purchasers and to purchase shares for which purchasers cannot be procured.

It is also customary for underwriters to agree with sub-underwriters (sometimes a ‘chain’ of sub-underwriters) to the effect that the latter will take up part of the underwriter’s liability to purchase shares not accepted by the public.

The existence of an underwriting or sub-underwriting agreement would not be viewed as disqualifying arrangements for the purposes of FA86/S77A.

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

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

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