HMRC - STSM042500 - Reliefs: Section 77A - Relevant Mergers

For stamp duty relief to be available under FA86/S77(1), the provisions at FA86/S77(3)(i) require there to be no disqualifying arrangements in existence at the time the instrument transferring the shares under the share for share exchange is executed.

Occasions can arise however where, under arrangements, two companies (A and B) agree to merge. Under these arrangements a new holding company (‘NewCo’) is incorporated. Newco acquires the whole of the existing share capital of A in exchange for new shares in Newco. The whole of the existing share capital of B is then immediately acquired by Newco in exchange for new shares in Newco.

These arrangements will not be “disqualifying arrangements” if they meet all the conditions at FA86/S77A(4) so as to be “relevant merger arrangements”. FA86/S77A(3)(b) provides that disqualifying arrangements shall not include arrangements which are “relevant merger arrangements”.

So, in the example above, the exisisting arrangement for the share exchange with B does not taint the share exchange with A. Therefore, the acquisition of company A will not give rise to a charge to stamp duty but the acquisition of company B will, maintaining the position prior to the introduction of s77A.

Subscriber shares

FA86/S77A(4)(c)(ii) provides that the shares in the acquiring company issued as consideration for the original target shall be ignored for the purposes of a relevant merger arrangement.

However, it is usual for the acquiring company to have issued subscriber shares to a substantial shareholder of the target on its formation. If it is a PLC, it will have issued £50,000 worth of shares. To mirror the first target’s pre acquisition capital, the subscribers will get fewer shares when the target’s shares are transferred.

For the purposes of FA86/S77A(4)(c) (ii) , subscriber shares are treated as consideration for the acquisition of Company A.

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

STSM042460 provides information on what are ‘disqualifying arrangements’.

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