
DRAFT STATUTORY INSTRUMENTS

2012 No.

The Enactment of Extra-Statutory Concessions Order 2012

Groups of companies arrangements: corporation tax

14.—(1) In the Corporation Tax Act 2010, after section 174 (Company A's proportion if option arrangements in place) insert—

“174A Certain option arrangements not within section 173

(1) Arrangements entered into by a joint venture company which, apart from this section, would be option arrangements within section 173 are not to be treated as such arrangements if and so long as—

- (a) the arrangements are within subsection (2), and
 - (b) none of the contingencies mentioned in subsection (3) to which the arrangements relate has occurred.
- (2) Arrangements are within this subsection if they are—
- (a) an agreement which provides for the transfer of shares or securities in the joint venture company to one or more members of that company on, or as a result of, one or more contingencies mentioned in subsection (3) occurring, or
 - (b) a provision in a constitutional document of the joint venture company which provides for the suspension of a member's voting rights on, or as a result of, one or more of those contingencies occurring.
- (3) The contingencies referred to in subsections (1)(b) and (2) are—
- (a) the voluntary departure of a member,
 - (b) the commencement of the liquidation, administration, administrative receivership or receivership of, or the entering into of a voluntary arrangement by, a member under the Insolvency Act 1986 or the Insolvency (Northern Ireland) Order 1989 or the commencement, or entering into, of equivalent proceedings or arrangements under the law of any country or territory outside the United Kingdom,
 - (c) a serious deterioration in the financial condition of a member,
 - (d) a change of control of a member,
 - (e) a default by a member in performing its obligations under any agreement between the members or with the joint venture company (which, for this purpose, includes any constitutional document of the joint venture company),
 - (f) an external change in the commercial circumstances in which the joint venture company operates such that its viability is threatened,
 - (g) an unresolved disagreement between members, and
 - (h) any contingency of a similar kind to that mentioned in any of paragraphs (a) to (g) which is provided for, but not intended to happen, when the option arrangements in question are entered into.

(4) This section does not apply if a member could alone or together with connected persons dictate the terms or timing of—

- (a) the transfer of shares or securities, or
- (b) the suspension of a member’s voting rights,

in advance of one or more of the contingencies occurring.

(5) For the purposes of subsection (4) members are not connected with each other by reason only of their membership of the joint venture company.

(6) In this section—

“connected” has the same meaning as in section 1122;

“constitutional document” means a memorandum of association, articles of association or any other similar document regulating the affairs of the joint venture company;

“joint venture company” means a company which—

- (a) has two or more member companies, and
- (b) carries on a commercial activity governed by an agreement regulating the affairs of its members;

“member” means a holder of shares or securities in the joint venture company.

174B Certain mortgage arrangements not within section 173

(1) Arrangements entered into by a company which, apart from this section, would be option arrangements within section 173 are not to be treated as such arrangements if and so long as—

- (a) the arrangements are a mortgage, secured by way of shares or securities in the company, which on default or the happening of any other event allows the mortgagee to exercise its rights against the mortgagor, and
- (b) the mortgagee has not exercised its rights against the mortgagor.

(2) This section does not apply if the mortgagee—

- (a) possesses greater rights in respect of the shares or securities which are the subject of the mortgage than it requires to protect its interest as mortgagee, or
- (b) could alone or together with connected persons dictate the terms or timing of the default or the happening of any other event which allows it to exercise its rights against the mortgagor.

(3) For the purposes of subsection (2)(b) the mortgagee is not by reason only of the mortgage connected with a company whose shares or securities are the subject of the mortgage.

(4) In this section—

“connected” has the same meaning as in section 1122;

“mortgage” means—

- (a) in England and Wales, and Northern Ireland, any legal or equitable charge, and
- (b) in Scotland, any right in security,

(and section 1166(1) (definition of “mortgage”: Scotland) does not apply).”

(2) In section 173 of that Act (cases in which option arrangements are in place), in subsection (2), at the end insert “(but see sections 174A and 174B)”.