
STATUTORY INSTRUMENTS

1999 No. 358

The Corporation Tax (Treatment of Unrelieved Surplus Advance Corporation Tax) Regulations 1999

Definition of group

6.—(1) In these Regulations “group” means a company resident in the United Kingdom (“the parent company”) which has one or more 51 per cent. subsidiaries together with that or those subsidiaries.

(2) For the purposes of paragraph (1)–

- (a) “51 per cent. subsidiary” means a 51 per cent. subsidiary that is a company resident in the United Kingdom;
- (b) a company is not the parent company within a group if–
 - (i) it has no 51 per cent. subsidiary but is itself a 51 per cent. subsidiary of another company, or
 - (ii) it and its 51 per cent. subsidiaries are all members of another group;
- (c) the question whether a company is a 51 per cent. subsidiary of the parent company shall be determined, subject to paragraph (3), in accordance with section 838, except that the parent company shall be treated as not being the owner–
 - (i) of any share capital which it owns directly in a company if a profit on the sale of the shares would be treated as a trading receipt of its trade; or
 - (ii) of any share capital which it owns indirectly, and which is owned directly by a body corporate for which a profit on the sale of the shares would be treated as a trading receipt of its trade; or
 - (iii) of any share capital which it owns directly or indirectly in a body corporate not resident in the United Kingdom.

(3) Where a company would otherwise not be a 51 per cent. subsidiary, but–

- (a) persons, whether company members or not, enjoy extraordinary rights or powers under the articles of association or under any other document regulating the company, and
- (b) because of that fact, ownership of the ordinary share capital (for the purposes of the definition of “51 per cent. subsidiary” in section 838(1)(a)) may not be an appropriate test of whether a company is a 51 per cent. subsidiary of the parent company,

then in considering whether a company is a 51 per cent. subsidiary of the parent company for the purposes of paragraph (1), holdings of all kinds of share capital, including preference shares, or of any particular category of share capital, or voting power or any other kind of special power may be taken into account instead of ordinary share capital.

(4) Notwithstanding that, apart from this paragraph, a company (“the subsidiary company”) would at any time be a 51 per cent. subsidiary of the parent company for the purposes of this regulation, the subsidiary company shall not be treated at that time as a 51 per cent. subsidiary for those purposes–

- (a) if arrangements are in existence by virtue of which any person has or could obtain, or any persons together have or could obtain, control of the subsidiary company but not of the parent company; and
 - (b) unless the following conditions are also fulfilled, namely—
 - (i) that the parent company is beneficially entitled to more than 50 per cent. of any profits available for distribution to equity holders of the subsidiary company; and
 - (ii) that the parent company would be beneficially entitled to more than 50 per cent. of any assets of the subsidiary company available for distribution to its equity holders on a winding up.
- (5) In paragraph (4)—
- “arrangements” means arrangements of any kind, whether in writing or not, other than arrangements whose sole or main purpose is to reduce the amount of surplus shadow ACT available to be utilised by a company other than the subsidiary company in accordance with regulation 13;
- “control” has the meaning given by section 840.
- (6) Where by virtue of any enactment a Minister of the Crown or Northern Ireland department has power to give directions to a statutory body as to the disposal of assets belonging to, or to a subsidiary of, that body, the existence of that power shall not be regarded as constituting (or as having at any time constituted) an arrangement within the meaning of paragraph (4)(a).
- (7) The provisions of Schedule 18 shall apply for the purposes of paragraph (4)(b) as if—
- (a) for any reference to section 413(7) to (9) there were substituted a reference to paragraph (4)(b);
 - (b) paragraph 7(1) of that Schedule were omitted and for any reference to “the relevant accounting period” there were substituted a reference to the accounting period current at the time in question.
- (8) For the purposes of these Regulations, a company (“A”) is the “immediate parent company” of another company (“B”) if, disregarding any other company of which B is a 51 per cent. subsidiary by virtue of section 838 and this regulation, A would be the parent company of B by virtue of section 838 and this regulation.