New Clause 10: Stamp duty: acquisition of target company's share capital

Summary

1. Stamp duty share for share relief is available where shareholders swap shares in one company (the target company) for newly issued shares by another company (the acquiring company), which has been inserted above the target company as part of a company reconstruction. This clause provides that no share for share relief will be available where arrangements are in place at the time of the share for share exchange for a change of control of the acquiring company. The clause will have effect in relation to any instrument executed on or after 29 June 2016.

Details of the clause

2. Subsection (1) provides that section 77 of Finance Act 1986 (acquisition of target company's share capital) is amended.

3. Subsection (2) inserts a new section 77(3)(i). This provides that in order for share for share relief to be available, there must be no disqualifying arrangements in existence at the time the instrument mentioned in section 77(1) is executed.

4. Subsection (3) makes a consequential amendment to section 77(3A) to ensure that the condition imposed by section 77(3A) does not apply to section 77(3)(i). The application would otherwise affect the question of whether the person or persons referred to in section 77A(2) could obtain control of the acquiring company.

5. Subsection (4) amends section 77(4) to provide that references to shares and share capital include stock for the purposes of section 77A as well as section 77.

6. Subsection (5) inserts a new section 77A.

7. Section 77A(2) describes a disqualifying arrangement.

8. Section 77A(3) provides that share for share exchanges mentioned in section 77(3) and relevant merger arrangements are not disqualifying arrangements.

9. Section 77A(4) provides a definition of "relevant merger arrangements". These occur where a share for share exchange between the target company (company A) and the acquiring company is followed by a second share for share exchange between shareholders in a second company (company B) and the acquiring company. Such arrangements are relevant merger arrangements where the conditions at subsections (a) to (c) are met. Subsection (b) requires that the conditions in section 77(3)(c) and (e)

would be met in relation to the acquisition by company B (if that acquisition was made in accordance with the arrangements). Subsection (c) refers to the conditions in section 77(3)(f) to (h). These conditions require that the shares in the acquiring company after the share for share exchange mirror the shares in the target company before the exchange. These conditions cannot be met in respect of the second exchange due to the first exchange and so for the purposes of subsection (c) the shares issued as consideration for the acquisition of shares in company A are ignored.

10. Section 77A(5) provides that where share for share exchanges or "relevant merger arrangements" are part of a wider scheme or arrangement which includes other arrangements which are not share for share exchanges or "relevant merger arrangements", those other arrangements are disqualifying arrangements.

11. Section 77A(6) provides definitions in respect of "the acquiring company"; "arrangements"; "control" and "the target company".

12. Subsection (6) sets out the commencement provision. The changes to the legislation have effect in relation to any instrument executed on or after 29 June 2016. Any references to arrangements include arrangements entered into before 29 June 2016.

Background note

13. Stamp duty is charged on instruments which transfer UK shares by way of sale. The rate is 0.5% of the consideration payable. There is a 1.5% higher rate but this only applies to transfers to depositary receipt issuers or clearance services.

14. Section 77 Finance Act 1986 provides relief on instruments transferring shares in one company (the target company) to another company (the acquiring company) where the acquiring company issues shares as consideration for the transfer to all the shareholders of the target company. The transfer must form part of an arrangement by which the acquiring company acquires the whole of the issued share capital of the target company in exchange for the issue of new shares in the acquiring company. The shareholders in the acquiring company after the share for share exchange must mirror those in the target company immediately prior to it.

15. The purpose of the share for share relief is to ensure that there is no stamp duty where there is no real change of ownership of the target company. The relief allows genuine reconstructions of companies to take place in a tax neutral way. New section 77A ensures that no share for share relief will be available where arrangements are in existence at the time the instrument is executed for a change of control of the acquiring company.