

Purchases of own shares – multiple completion contracts

HMRC would like to clarify its position regarding the purchases of own shares legislation at s1033 CTA 2010, where the transaction is effected through a multiple completion contract.

In order for capital treatment to apply, S1042 CTA 2010 imposes a condition that the seller must not, immediately after the purchase, be connected with the company making the purchase (or any other company which is a member of the same group). S1062 CTA 2010 sets out when a person is connected with a company for these purposes, in particular that:

A person is connected with a company if the person directly or indirectly possesses, or is entitled to acquire, more than 30% of–

(a) the issued ordinary share capital of the company,

(b) the loan capital and the issued share capital of the company, or

(c) the voting power in the company.

HMRC's view is that the word "possesses" in s1062(2) CTA 2010 refers to legal, as opposed to beneficial, ownership. When shares are subject to a sale under a multiple completion contract, the seller may (depending on the terms of the contract) lose beneficial ownership of all of the shares on the date of the contract. However, the legal ownership of the shares is retained until the sale of those particular shares has completed. This is the case even if those remaining shares are converted to so-called deferred shares with no voting or economic rights in the company on completion of the first tranche.

Therefore, as long as the seller remains a legal owner of so many "non-completed" shares that exceeds the 30% limit, they will remain connected with the company by virtue of s1062(2)(a) – possession of ordinary share capital. In such circumstances, the seller would not qualify for capital treatment under s1033 CTA 2010.

In the past, HMRC may have issued clearances under s1044 CTA 2010 where the connection test might not have been met due to retained legal ownership of the shares. For the avoidance of doubt, HMRC will not treat such clearances as void purely on the basis of retained legal ownership of the shares. However, going forward HMRC will apply the connection test as described above which may result in some applications being rejected.

HMRC expects that any alterations to the company's share capital structure (including the variation of rights attaching to any class of share), or change in share ownership, which is relevant to determining whether the conditions required for s1033 to apply are met, will be validly implemented in accordance with the relevant company law. This should take place at the time of the first share purchase, be registered at Companies House where necessary, and written up in the company's statutory books as soon as reasonably practicable.

HMRC manuals will be updated to reflect HMRC's position.