

UK CORPORATION TAX ANT- ABUSE LEGISLATION

There is legislation in the UK, of which there is no equivalent in Ireland, designed to prevent UK companies diverting profits out of the UK to countries charging low rates of Corporation Tax. These companies are called "controlled foreign companies".

A "controlled foreign company" is one resident outside the UK and controlled by persons resident in the UK, which is subject to less than 75% of the UK rate of tax. The legislation works by imposing UK tax charge in respect of the share of the extra tax that would have been payable in the UK. UK companies are required to self assess the liability in their normal Corporation Tax returns.

The apportionment can be avoided if the foreign company meets one of the following conditions:-

1. The company does not exist mainly to reduce UK tax by diverting profits out of the UK.
2. The foreign company has an acceptable distribution policy where at least 90% of its available profits are distributed within 18 months.
3. The company's foreign profits are less than £50,000.
4. The company is involved in exempt activities. Examples of exempt activities are investment companies and a company involved mainly in goods for return to the UK.
5. The foreign company is a stock exchange quoted company.

Transfer Pricing

If a UK resident company has a controlling interest in an overseas subsidiary, then certain UK rules counter so called “transfer pricing”. Transfer pricing is where goods or services are supplied at an undervalue or overvalue in order to manipulate the profits which should arise. The transfer pricing rules prevent UK companies from charging artificial prices in order to gain tax advantage.

Where transactions are not made at arms length, adjustments are to be made to substitute arms length prices by the UK resident company in its Corporation Tax returns. There are detailed rules for establishing which companies are within the scope of the transfer pricing rules. The basic test is one of control. HMRC have introduced advance pricing arrangements to enable companies to agree in advance whether and if transfer pricing applies.

This Guide is intended as an overview and broad outline of the matters covered in it. Its purpose is to inform and raise awareness. We are happy to offer specific legal advice on particular circumstances.

This Guide should not be relied on as a substitute for comprehensive legal advice with reference to the particular circumstances.

While we have taken due care in the preparation of this publication, we do not accept legal liability as a result of any reliance placed on anything in this Guide. The reader should rely only on specific legal or taxation advice.