

Profit on shares can escape tax'

09 August 2010

BS writes: Many years ago, on the advice of our accountant, we put elements of our business into three separate companies within a group structure. After a difficult start to 2009, one of the trades was put into administration. The parent company had to provide against the intercompany debt that arose from funds loaned to keep the business going. Initially the losses were funded with bank debt, but we are planning to clear the debt using part of a holding in shares we have in a trade supplier. I have been warned that the sale of shares will be at a profit so there will be tax to pay. Is this the case or could we set the loss against the profit?

Putting a group structure in place was good advice, writes Jon Sutcliffe, partner at Kingston Smith LLP. Group structures are often put in place when a sale of part of the business is anticipated, but also where there is value in ring-fencing assets from a trade and/or its associated liabilities.

The tax treatment of the sale of shares in the trade supplier will depend on the size of the holding. It is possible that the Substantial Shareholdings Exemption (SSE) will make this profit tax free but there are a number of conditions, for example, the holding will need to be at least 10% of the company's share capital and must have been held for at least a year.

Even if the sale of the shares does not qualify for SSE, you may not need to pay tax on the profit. This is because the loss you incurred when providing against the intercompany debt may qualify as a 'non-trade loan relationship debit'. It all depends on whether you were connected at the time provision was made in your accounts. If the debt was provided against when the company either went into administration or should have been in administration, then it will not qualify. However, if it was after the company went into administration and you had reason to believe you would not recover the debt, then this would qualify and can usually be carried forward and relieved against chargeable gains made by the same company (or sometimes other companies in the same group) in future periods. In your case, it is possible to set it off against the profit you will make on the sale of the trade shares.

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