



Dangers of a Dividend Waiver!

Updated March 2009

There are occasions when one or more shareholders may decide that they will forgo their rights to a declared dividend.

For instance say Company A votes a dividend of £100 per share to the owners of its issued share capital, 100 Ordinary Shares; and the shares are owned 50 by Mr B and 50 by Mrs B. Mr B decides to waive his rights to the dividend so only Mrs B takes the dividend of £5,000. (50 x £100).

As always there is paperwork required to evidence the transactions.

But what effect would it have if Company A decided that it could make a dividend payment in total of £10,000 and that it should all go to Mrs B? As a further twist the retained profits, the reserves of the company were £12,000.

If Mr B waives his rights to a dividend and the company goes ahead and pays £10,000 to Mrs B, on the face of it all is well. The company has sufficient reserves to cover the dividend.

Unfortunately this second approach will likely create tax problems for Mr B!

What has actually occurred is that Mr B has given his share of the dividend pot to his wife. Legislation exists (settlements legislation) which would allow the taxman to unpick this transaction and tax one-half of the dividend as if it had been paid to Mr B.

When might HMRC act?

HMRC are likely to get excited only if arrangements are made whereby a (say) 30-percent shareholder receives more than 30 percent of the distributable profits. In such circumstances, HMRC are likely to look around for reasons for this discrepancy in an attempt to invoke the settlements legislation.

If you have any concerns regarding the above points please do give me a call.

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