Company purchase of own shares: multiple completion contracts

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HMRC have recently clarified their position on the company purchase of own shares legislation where the transaction is effected through a multiple completion contract.

For capital treatment to apply on a purchase of own shares, Corporation Tax Act 2010 s 1042 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).

HMRC have recently clarified their view that the word ‘possesses’ in s 1062(2) (the section which contains the rules for determining whether a person is connected with a company) refers to legal, as opposed to beneficial, ownership. Therefore, where the transaction is effected through a multiple completion contract, they will remain connected with the company by virtue of s 1062(2)(a) as long as the seller remains a legal owner of more than the 30% limit of ‘non-completed’ shares (possession of ordinary share capital). In such circumstances, the seller would not qualify for capital treatment under s 1033.

HMRC have confirmed that they will not disturb clearances that have already been given where the connection test might not have been met due to retained legal ownership of the shares.

For further details, see HMRC’s note on the CIOT website: www.tax.org.uk/purchase_own_shares and Peter Rayney’s article in the March edition of *Tax Adviser*: www.taxadvisermagazine.com/multiple_completion.