HMRC - CTM80520 - Claims: Consent To Be Given

CTA10/S97(9), FA98/Schedule 18/Paragraph 70(2)

When any one of the members of a consortium (or a comany in the same group as a member of a consortium) makes a claim to consortium relief, there must be consent to the claim by all the members of the consortium as well as the company owned by the consortium. Consent from the members of the consortium must also be given where the surrender is to the company owned by a consortium (CTM80515)

A ‘member of the consortium’ is a company that beneficially owns at least 5% of the ordinary share capital (CTM80530). The example that follows is about consent.

Example

Company Z has ordinary share capital of 100 £1 shares and its shareholders are as above.

G is an equal partnership between Company H and Company J, who are not connected.

Any claim by A in respect of Z’s loss or other amount requires the consent of A, B, C, D, and E but not of F or partnership G (or its partners). This is because neither F nor partnerhip G is a member of the consortium, as:

F beneficially owns less than 5% of the ordinary share capital,

and

the partners own the assets of G partnership, so H beneficially owns 3% and so does J and therefore neither owns 5% cent or more.

A consortium claim cannot be made if a profit on the sale of the shares held by the member in the company directly owned by the consortium would be a trading receipt (CTA10/Ss132(4) and 133(3)), however consent must include that of any such holder of shares that is a member of the consortium, although such a company may not itself be entitled to relief. The fact that a company that holds the shares of the surrendering or holding company on trading account is a member of the consortium does not preclude claims by the other companies (CTM80530).

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