HMRC - CTM80545 - Amount Of Relief: Claimant Is Company Owned By A Consortium: Claims Based On Consortium Condition 1

CTA10/S144

CTA10/S144 applies where a company owned by a consortium is claiming from a member of a consortium. For guidance on situations where the company owned by a consortium is surrendering to a member of a consortium see CTM80540.

The amount of relief available to a company owned by a consortium to claim against its profits for the overlapping period (CTM80225) from a member of the consortium is limited to the ownership proportion of its total profits for that period. The proportion is the lowest of:

the percentage holding of the ordinary share capital of the claimant company beneficially owned by the member of the consortium,

the member’s percentage entitlement to profits available for distribution by the claimant company to its equity holders,

the member’s percentage entitlement to assets available for distribution by the claimant company to its equity holders on a notional winding-up,

the percentage of voting rights in the claimant company directly possessed by the member of the consortium (for claims for accounting periods beginning on or after 12 July 2010).

The detailed rules on the first three percentages are in CTA10/Part 5/Chapter 6. They apply as in CTM81000 onwards, but read any reference to:

‘parent company’ as a reference to ‘member of the consortium’, and

‘subsidiary company’ as a reference to ‘company owned by the consortium’.

The percentages are based on entitlement and possession in the overlapping period (CTM80225) of the company owned by the consortium and the surrendering company. Where any of the percentages has varied in the overlapping period, the average percentage is taken, as in CTM80540.

Whichever measure is used (share capital, entitlement to profits, etc) the proportion or percentage should be based on the total of that measure that is held in the claimant company, so including all equity holders whether or not they are members of the consortium. As an example, CTA10/S153(1)(b) only requires 75% of the ordinary share capital to be beneficially owned by other companies; were the other 25% owned by non-corporate shareholders then those non-corporate shareholders would not be able to make a consortium claim (CTM80530), but that 25% holding would still need to be factored in when looking at the proportion of ordinary share capital owned by the members of the consortium who could make a claim.

For claims for accounting periods beginning on or after 12 July 2010, CTA10/S144 is subject to CTA10/S146B. This applies where arrangements are in place to prevent the member of the consortium from controlling the claimant, and the main purpose, or one of the main purposes of the arrangements is to enable the member of the consortium to gain a tax advantage (see CTM80588).

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