HMRC - CTM80675 - Example: Surrender By Member Of The Consortium And By A Member Of Its Group, Overlapping Periods And Company Joining Link Company’S Group

The consortium and group structure is as shown in the diagram at CTM80590.

The percentages shown in the diagram indicate beneficial ownership of ordinary share capital and you should assume that the arrangements rules (CTA10/Ss146A, 146B, and 155) do not apply.

The votes and entitlement to profits and assets on winding up follow the shareholdings shown (see CTA10/Ss151(4) for the 75%+ and 90%+ subsidiaries (CTM80535), and Ss143(3) and 144(3) for the ownership proportions of L and X in CH (CTM80540 and CTM80545)).

Apportionments are on a time basis (see CTM80260 for alternative methods).

Facts

CH is a company owned by members of a consortium L (60%) and X (40%). L is a 75% subsidiary of P. This part of the consortium and group structure has existed for many years.

CH draws up its twelve month accounts to 31 December. L and P both draw up their twelve month accounts to 30 June.

For its accounting period to 31 December 2010, CH has losses of £72,000.

For their accounting periods to 30 June 2011, P has profits of £20,000 and L has profits of £15,000.

S1 becomes a 75% subsidiary of P on 1 October 2010.

S1 Ltd has profits of £6,000 for its accounting period to 30 June 2011.

Each of P, L and S1 makes a consortium claim in respect of CH’s losses against its profits for the accounting period to 30 June 2011. They make the claims in the order L first, then P, and then S1 and ask for the claims to be dealt with in that order (CTM80220).

Procedure

The provisions about apportionment to overlapping periods and multiple claims (CTA10/Ss138 to 142 - CTM80215) interact with those about consortium shares (CTA10/S143 - CTM80540) and those about claims by group members CTA10/Ss133 and 145 - CTM80555.

L’s claim

The overlapping period (CTM80225)·is six months ended 31 December 2010.

CH’s ‘surrenderable amount’ for its accounting period ended 31 December 2010 is £72,000.

CH’s ‘unused part of the surrenderable amounts’ is the same as its ‘surrenderable amount for the overlapping period’ (CTM80230). It is:

CTA10/S143 (2) (CTM80540) limits this to L’s ownership proportion. (In the rest of this example ‘ownership proportion’ is referred to as ‘share’.) This limit is:

L’s ‘unrelieved part of the claimant company’s available total profits’ is also the same as its ‘available total profits for the overlapping period’ (CTM80235), as it has made no prior claims. It is:

The amount that can be surrendered/claimed is the smaller of £21,600 and £7,500: £7,500.

P’s claim

P can claim consortium relief because it is in the same group as the link company L, consortium condition 2 at CTA10/S133(1) and (3)-(8) applies (CTM80550).

The overlapping period is six months ended 31 December 2010.

The starting point for working out CH’s ‘surrenderable amount for the overlapping period’ is £36,000 as above. CTA10/S143(2) (CTM80540) limits the surrenderable amount for the overlapping period by reference to L’s share (CTA10/S145 (2) - CTM80555) of CH’s ordinary share capital. This limit is:

CH has made a prior surrender to L and so its ‘unused part of the surrenderable amounts’ must take account of that. Following the steps in CTM80240:

STEP 1

L’s claim from CH involves part of CH’s surrenderable amount for accounting period ended 31 December 2010.

STEP 2

L’s prior claim of £7,500 was for the overlapping period of six months ended 31 December 2010.

The common period of the overlapping periods in L’s claim and P’s claim is six months ended 31 December 2010.

The whole six month overlapping period for L’s prior claim is included in the common period, so the whole of the £7,500 is apportioned to that common period.

STEP 3

The total, £7,500, is the ‘amount of prior surrenders for the overlapping period’.

So CH’s ‘unused part of the surrenderable amounts’ is £21,600 less £7,500 which is £14,100.

P’s ‘unrelieved part of the claimant company’s available total profits for the overlapping period’ is the same as its ‘available total profits for the overlapping period’, as it has made no prior claims. It is:

The amount that can be surrendered/claimed is the smaller of £14,100 and £10,000: £10,000.

S1’s claim

As with L and P, the six month period from 1 January 2011 to 30 June 2011 does not overlap with CH’s accounting period ended 31 December 2010. In addition, for the three-month period to 1/ October 2010 S1 was not in a group relationship with the link company L. So it was not in the same group with L for that time and CTA10/S142(2) (CTM80555) applies to prevent that three months from being part of an overlapping period. So the overlapping period is the three months ended 31 December 2010.

The starting point for working out CH’s ‘surrenderable amount for the overlapping period’ is:

As with P above, CTA10/143(2) limits this by reference to L’s share of CH’s ordinary share capital (CTA10/S145(2)). This limit is:

CH has made a prior surrender to L and P and so its ‘unused part of the surrenderable amount for the overlapping period’ must take account of that. Following the steps in CTM80240:

STEP 1

L’s claim from CH involves part of CH’s surrenderable amount for accounting period ended 31 December 2010.

P’s claim from CH involves part of CH’s surrenderable amount for accounting period ended 31 December 2010.

STEP 2

L’s prior claim of £7,500 was for the overlapping period of six months ended 31 December 2010.

The common period of the overlapping periods in L’s claim and S1’s claim is three months ended 31 December 2010.

The £7,500 is apportioned to that common period:

P’s prior claim of £10,000 was for the overlapping period of six months ended 31 December 2010.

The common period of the overlapping periods in P’s claim and S1’s claim is three months ended 31 December 2010.

The £10,000 is apportioned to that common period

STEP 3

The total £8,750 (£3,750 plus £5,000) is the ‘amount of prior surrenders for the overlapping period’.

So CH’s ‘unused part of the surrenderable amounts’ is £10,800 less £8,750 which is £2,050.

S1’s ‘unrelieved part of the claimant company’s available total profits’ is the same as its ‘available total profits for the overlapping period’, as it has made no prior claims. It is:

The amount that can be surrendered/claimed is the smaller of £2,050 and £1,500: £1,500.

CTA10/S146(2) and (3)

The last stage is to determine the maximum amount that can be allowed to L, P, and S1 taken together. The calculation of the maximum amount is by reference to the amount that L could claim if it had sufficient profits and was UK related (CTM80555). That amount is £21,600 (L’s share of CH’s surrenderable amount). The total £19,000 claimed by L (£7,500), P (£10,000), and S1 (£1,500) is less than this, so no further restriction is needed.

Note that if any of CT1, CT2, or CT3 had profits then CTA10/S148 (CTM80580) would apply to reduce CH’s losses available for surrender. This is because CH is both owned by a consortium and is a member of a group and there is the potential for CT1, CT2, and CT3 to make group claims in respect of its losses. CH’s losses of £72,000 would be reduced by the total amount of the maximum group claims possible after taking into account any actual surrenders by other companies in the group. See CTM80685.

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