HMRC - CTM80690 - Example: Restriction Where Group Claims Are Possible By Companies Which Are Not Owned By The Consortium

The consortium and group structure above is as shown in the diagram at CTM80590, except that CH owns 75%, not 90%+, of CT3’s ordinary share capital, and CT3 also has a 75% trading subsidiary CT4.

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)).

Facts

CH is a company owned by a consortium, and L (60%) and X (40%) are members of a consortium throughout the year to 31 December 2011. CH’s business is wholly or mainly holding shares in its 90% subsidiaries, CT1 and CT2 (CTM80535).

CT1, CT2, CT3, and CT4 are trading companies. CT1 and CT2 are 100% subsidiaries of CH. CT3 is a 75% subsidiary of CH. CT4 is a 100% subsidiary of CT3.

All companies make up accounts for twelve months to 31 December 2011. In that period:

CH has excess management expenses of £10,000.

CT1 has a trading loss of £50,000.

CT2 has a trading loss of £40,000.

CT3 has a profit of £30,000.

CT4 has a profit of £20,000.

L has profits of £80,000.

X has profits of £90,000.

Procedure

The amounts that can be surrendered as consortium relief must be restricted by the amount of any potential group claims by companies grouped with the companies owned by the consortium (CTM80580), notwithstanding that not all of those companies are themselves owned by the consortium.

The claims

CH, CT1, CT2, CT3, and CT4 are a group of companies. Only CH, CT1 and CT2, however, are companies owned by the consortium (CTM80530). CT3 and CT4 are not, because they are not 90% trading subsidiaries of CH.

If no group claims are made, neither L nor X can make consortium claims. This is because CT3 and CT4 between them could make group claims and exhaust the available relief of each (individually) of CH, CT1, and CT2. CT3 and CT4 together could absorb relief of £50,000 (£30,000 + £20,000). £50,000 is greater than (or equal to) each of:

CH’s excess management expenses of £10,000,

CT1’s loss of £50,000, and

CT2’s loss of £40,000.

If, however, CT3 and CT4 each claims maximum group relief from CT1 (in total £50,000), L and X could each claim relief in respect of their 60% and 40% respective shares (‘ownership proportion’ CTM80540) of CH’s excess management expenses of £10,000 and CT2’s £40,000 loss. This is because CTA10/S149(6) takes account of any group claims that have actually been made when considering the amount of consortium claim that can be made (CTM80585).

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