HMRC - CFM97110 - Infrastructure: Outline

TIOPA10/PART10/CH8

Companies providing public infrastructure assets commonly have fairly steady cash flows and generate only a small profit margin over financing cost. Therefore, by their nature, they can be highly geared and would be likely to suffer an interest restriction as a result of the application of either the fixed ratio method or the group ratio method.

The Organisation for Economic Cooperation and Development (OECD) recognised in their 2015 Final Report on Limiting Base Erosion Involving Interest Deductions and Other Financial Payments (Action 4) that, because of both the nature of public infrastructure assets and the close connection with the public sector, financing arrangements of companies providing such assets commonly present little or no base erosion or profit shifting risk. This is particularly the case where financing arrangements are provided by third parties (with no significant equity interest in the company) and if related income is subject to tax in the same territory as the interest expense is deductible.

Recognising this, and in order to ensure that private investment in public infrastructure is not deterred by unwarranted restrictions on the deductibility of tax-interest expense, the rules include an alternative approach to limiting such deductions for companies that provide public infrastructure. This approach is based on the optional exclusion in the OECD report, and is intended to provide effective protection against base erosion using interest or similar expense. To use the alternative rules in Chapter 8, each company must meet a number of conditions and make an election to be a qualifying infrastructure company (QIC).

Qualifying infrastructure companies and qualifying infrastructure activities

TIOPA10/S433

In order to be a qualifying infrastructure company a company must meet the following requirements.

It must be fully taxed in the UK;

all, or all but an insignificant proportion, of its income and assets must be referable to activities in relation to public infrastructure assets (qualifying infrastructure activities); and

it must have elected to

Public infrastructure assets

Public infrastructure assets fall into two types:

tangible assets forming part of the infrastructure of the UK, which meet a public benefit test; and

buildings (or part of buildings) that are part of a UK property business and are let (or sub-let) on a short term basis to unrelated parties.

Both types of asset must have, have had, or be likely to have an expected economic life of at least 10 years, and be recognised on the balance sheet of a member of the group of the QIC (which itself is fully taxed in the UK).

Effect of election

If a valid election is made, certain amounts are excluded from being tax-interest expense of the company. In addition, some amounts of the QIC are to be ignored or treated as nil in calculating other figures for the Corporate Interest Restriction.

As a result of the reduction in tax-interest expense, a group’s potential for restriction under the fixed ratio method and the group ratio method will be lower with a valid QIC election.

However, because of the exclusion of other amounts from the QIC from these calculations, the actual restriction could be lower or higher as a result of the QIC election.

Transitional rules

Transitional rules apply to accounting periods beginning before 1 April 2018.

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