HMRC - CFM97170 - Infrastructure: Buildings Within UK Property Business

TIOPA10/S436(5)-(9)

A building, or part of a building, may be a public infrastructure asset of a company if the company, or another company within the worldwide group, carries on a UK property business including the building or part of the building and;

the building or the part of the building is, or is to be, let on a short-term basis to persons, who at that time, are not related parties of the company or companies;

the building or the part of the building has had or is likely to have an expected economic life of at least ten years; and

the building or the part of a building meets the group balance sheet test.

UK Property Business

A UK property business is described in the Property Income Manual at PIM1020.

Let on a short-term basis

A building, or part of a building, is let to a person if that person is entitled to the use of the building or part under a lease or other arrangement. This let (or other arrangement) is considered to be short term if it has an effective duration of less than fifty years and is not considered a finance arrangement as defined by CTA10/PART16/CH2.

For the purposes of this test, references to let and leases can be read as including sub-let and sub-leases. The on a short term basis covers a lease or other arrangement, TIOPA 2010/s436(6). Other arrangements can cover licence income from the occupation of real estate where this would constitute UK property business income.

Example 1

A university contracts with a special purpose company (SPC) to provide student accommodation. The contract for construction of the student accommodation is between the SPC and a construction company, which also owns 75% of the SPC’s ordinary share capital through a related party of the construction company. The university owns the remaining 25% of the SPC’s ordinary share capital.

The completed student accommodation is leased from the SPC to the university for 60 years in return for rent over that period. While the building forms part of a UK property business of the SPC, this is neither a short term let, nor to an unrelated party.

However, the university then lets parts of the accommodation to students during term times each academic year. These are short term (sub) lets to persons who are in general not related to the SPC. As such the student accommodation is a public infrastructure asset in relation to the SPC.

In example 1 the assumption is that university accommodation is let out to students for the whole of the year. Often university accommodation is used for other purposes outside term time. The income generated from these activities can be necessary to ensure the economic viability of the UK property business providing the student accommodation. Where these additional revenue stream are clearly a secondary function of the building then these other activities could be considered to be ancillary to the UK property business.

Example 2: Ground Rents

Company A holds the freehold of a property and has granted a 199 year lease to Company B in return for a ground rent of £2,000 per year. Company B grants a 20 year lease to a party unrelated to either company. It does not matter whether Company A is related to Company B.

In this case both A and B carry on a UK property business of including the property. For both companies the test in s436(5)(b) can be met by virtue of the 20 year lease granted by Company B, in accordance with the criteria under TIOPA 2010/s436(7) and (9).

Therefore, the property can be a public infrastructure asset in relation to both A and B. The ground rent would not prevent Company A from being a qualifying infrastructure company, as it is income from the provision of public infrastructure asset, which is a qualifying infrastructure activity.

Example 3: Sale of Freehold or granting long leasehold to landlord

A company that is an existing QIC holds the freehold of a large part of a city centre. It currently lets the buildings on this site to third parties on short term lets as part of a property business. The property consists of a mix of commercial and residential lettings.

The company identifies some of its residential units for sale to a landlord. These are sold either by disposing of the freehold or granting a long terms lease of about 200 years. The landlord continues to let out the property to third party tenants on short term leases.

The consideration for the disposal of the freehold or the premium on granting the long term lease is a chargeable gain assuming that the company is not a property trader. The gain is not considered for the purposes of the public infrastructure income test at TIOPA 2010/s433(2)(a). The profits from the disposal or the premium received on the long lease will not taint the QIC status of the company. If ground rents received as part of the disposal of a long term lease these will lie within the definition of TIOPA 2010/s433(2)(a) so will be income derived from qualifying infrastructure activities. This is because the property is still being let to tenants on short term leases.

Example 4: Sale of Freehold or granting long leasehold to owner-occupiers

If, in the previous example, the residential units are sold on to owner occupiers, then on the date of the disposal they are no longer public infrastructure assets. The assumption is made that the company is not a property trader. If group rents received from the granting of a long term lease are significant they could taint the QIC status of the company.

However, if the disposal proceeds are used to redevelop some of the remaining rental units, then it is possible that the sale of the residential properties could be considered necessary to facilitate the provision of public infrastructure assets. In this case receipt of the ground rents would be income from a qualifying infrastructure activity. This would depend on the facts on circumstances. There would have to be a clear link that the premiums and ground rent received were for the purposes of the development of the parts of the site that were provided for infrastructure activities. Please refer to CFM97180 for further guidance and in particular example 3 on that page.

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