HMRC - CFM97180 - Infrastructure: Ancillary To, Or Facilitates, Provision

TIOPA10/S436(1)(b)

To be a qualifying infrastructure company the company must, among other things, meet the public infrastructure income test. One of the permitted categories of income is that deriving qualifying infrastructure activities carried on by the company. The primary qualifying infrastructure activity is the provision of a public infrastructure asset. Qualifying infrastructure activities also include activities which are either ancillary to, or facilitate, that provision.

Example 1

An operator is licensed to upgrade and operate an airport, and by virtue of this license, it is considered to be using a public infrastructure asset in a regulated activity. The operator holds a leasehold over the airport and surrounding land to enable it to carry out its activities. The licensor agrees the operator should have the right to sub-lease retail units in the terminal, buildings to a hotel chain and land to a car park operator.

Whilst these subsidiary activities might form a significant part of the income generating activities of the operator, none of them would be provided if there was no airport. They could be considered to facilitate the provision of the airport through making its upgrade and operation economically viable. If so, these activities will be qualifying infrastructure activity.

Example 2

A private finance initiative (PFI) hospital contract may be bid for on the basis the operator is granted a leasehold over all or part of the hospital site, and has the right to sub-lease retail outlets for use by patients and visitors.

The income generated from these sub-leases will be insignificant compared to the income generated from the provision of a hospital, but these retail outlets are a necessary but ancillary function of the facility. As such, rental income from these leases will be income from a qualifying infrastructure activity.

Ancillary and facilitative within UK property groups

Projects that provide buildings that are public infrastructure assets may be subject to “section 106” obligations under the Town and Country Planning Act 1990. They may have also undertake other activities that facilitate the provision of public infrastructure assets by making a project as a whole economically viable.

Where a business is unsure whether an activity is ancillary to or facilitates the provision of a public infrastructure asset it can apply to HMRC for a non-statutory clearance.

Whether an activity is facilitative or ancillary to public infrastructure assets depends upon the specific facts and circumstances. The following examples are illustrative of activities that may fall into one of these categories.

Example 3: Providing funding for the infrastructure assets

Where a small proportion of a development consists of properties built for sale it may be the case that the proceeds from the for-sale properties are necessary for the funding of the for-rent investment. For the development and sale of these properties to be considered to facilitate the provision of for-rent public infrastructure assets there must be a clear link from the for-sale development to the for-rent investment.

It is to be expected that all the proceeds from the sale of the properties would be reinvested in the infrastructure assets or used to repay short-term loan. It would also be expected that the scale of the for-sale development would be significantly smaller than that of the for-rent assets.

If the provision of for-sale housing is itself one of the main objectives of the scheme it can no longer be said to be merely facilitative. To ascertain whether the provision of for-sale housing is itself a main objective of the scheme it may be necessary to examine the planning documents for the development as a whole.

Example 4: S106 Requirements Enablement Schemes

It is very common that S106 requirements include a requirement for the property developer to build and sell a certain number of affordable residential units. These are known as enablement schemes.

Where a company is required to build enablement housing as part of a planning requirement under a S106 agreement, and is required to sell this enablement housing after the development, it is likely that the motive for entering the enablement transactions is to obtain planning consent for the main assets of the development. If this is the motive and the main assets are public infrastructure assets then the provision of the enablement housing is likely to facilitate the provision of public infrastructure assets so that income from the enablement transactions is income from a qualifying infrastructure activity.

There are many different fact patterns that can cover this situation. The enablement scheme does not necessarily occur on the same site or within the same company. However, it would usually occur in the same vicinity. There may be more than one development that is part of the section 106 agreement and this may include more than one company in the group. In these situations the group may look within its own investment portfolio to locate a property that could be developed as party of the enablement scheme. It may have to seek out a new site to provide this enablement development.

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