HMRC - CFM97240 - Infrastructure: The Election

TIOPA10/S433(1)(d), S434, S435

A company cannot be a qualifying infrastructure company (QIC) in an accounting period unless it makes an election to do so, and that election has effect for the accounting period. There is no prescribed form for the election. If the group has a Customer Compliance Manager (CCM), elections can be sent to them, otherwise see the CIR internet page for where to send elections.

Timelimit

Such an election must be made before the end of the accounting period to which it is to have effect. The exception to this is for accounting periods ending before 1 April 2018, where the election can be made any time before that date (elections for a transitional period).

Example 1

A company meets the public infrastructure income test and public infrastructure asset test and is fully taxed in the UK in the 12 month accounting periods ended 31 December 2019, 31 December 2020 and 31 December 2021.

It makes an election to be a QIC on 31 December 2020. As such, it will not be considered a QIC for the accounting period ended 31 December 2019, but will be for the accounting periods ended 31 December 2020 and 31 December 2021.

Once the election has been made, it will continue to have effect for all subsequent accounting periods after the first it has effect for. This is subject to:

the company not failing any other condition it must meet to be a QIC (the public infrastructure asset test, the public infrastructure income test and the full taxed in the UK condition); and

the company not revoking that election.

Anti-cycling provisions

A company must revoke any election to be a QIC before the first day of the first accounting period in which it is not to have effect. In any case, the revocation cannot have effect in relation to any accounting period which begins less than five years after the first day of the first accounting period in which the election to be a QIC had effect (s434(3)).

Once an election has been revoked by a company, a new election to be a QIC cannot have effect for any accounting period beginning less than five years after the first day of the accounting period from which the revocation had effect (s434(4)).

Example

A company makes an election on 31 December 2018 to be a QIC. It meets the other conditions necessary, so the election has effect for the 12 month accounting period ended 31 December 2019. It subsequently brings forward its balance sheet date to 30 June 2020.

On 1 January 2023 the company revokes its election. This cannot have effect for the 12 month accounting period ended 30 June 2024, as this began (on 1 July 2023) less than five years after the existing election had begun to have effect (1 January 2019). The revocation must be prospective; as such the earliest it can have effect is the 12 month accounting period ended 30 June 2025.

The earliest another election to be a QIC could have effect would be for the 12 month accounting period ended 31 June 2030, if the election was made prior to 1 July 2029.

Consequences of failing the QIC conditions

A company may have a valid election in operation but in an accounting period may fail to meet the public infrastructure income test, public infrastructure assets test or is not fully taxed in the United Kingdom in the accounting period. In this accounting period the company has ceased to meet the definition of being a QIC.

The consequences is that the exemptions and provisions that effect a QIC no longer apply. Tax-interest exempts that would have previously qualified as exempt amounts no longer do so as prescribed by TIOPA 2010/s438. However this also means that the provisions at TIOPA 2010/s440 to s442 no longer also apply. This allows the tax-EBITDA of the company to contribute to the tax-EBITDA of the worldwide group. Amounts of adjusted net group-interest expense, qualifying net group-interest and group-EBITDA that were previously left out of account can now be included the worldwide group calculation. Thus, the company will be included in the worldwide group calculations of the fixed ratio and the group ratio.

If in the following accounting period, the QIC tests are no longer failed, then the company will be back within the definition of being a QIC. This means that the chapter 8 provisions will again apply to the company.

QIC’s Deliberately Failing the QIC tests

A worldwide group may identify a tax advantage for the group if one of more of its QIC subsidiaries were to be considered to be outside the Chapter 8 provisions in a specific accounting period. A company may have wished to revoke the QIC election, but it may be out of time or prohibited from revoking the election in that period. The company cannot choose to deliberately fail the QIC test in these circumstances. If it did try to do so there be recourse to the {anti-avoidance provisions} which would reverse the effect of any tax advantage being sought.

Example

A company deliberately chooses to introduce a significant amount of income or assets related to non-infrastructure activity. In these circumstances the anti-avoidance provision will be applied to counteract the tax advantage by making such adjustments that are just and reasonable.

Transfer of an infrastructure business in the same worldwide group

Where a QIC transfers to another company in the same worldwide group, a business or a part of a business that consists of a qualifying infrastructure activity, but the transferee has not made an election to be a QIC which has effect for the accounting period of the transfer, the transferee is treated as if had made the election that the transferor had (s434(5)).

Example

Company A made an election on 31 December 2018 to be a QIC, which had effect for the 12 month accounting period ending 31 December 2019. On 1 June 2020 it transferred its business, which is a qualifying infrastructure activity, to Company B which is in the same worldwide group as Company A.

Company B has a 31 December balance sheet date. It was incorporated on 1 January 2020 and was dormant until the business of Company A was transferred in. It had not previously made an election to be a QIC, however it will be considered to have inherited Company A’s 31 December 2018 election. It should be deemed a QIC for the accounting period ended 31 December 2020, and would be able to make a revocation which could have effect from the 12 month accounting period ended 31 December 2024.

Fully taxed in the UK

One of the conditions necessary to be a QIC in an accounting period is that a company is fully taxed in the UK. This includes two specific requirements that the company has not:

made an election to exempt its profits or losses from an overseas permanent establishment (under CTA09/S18A) which has effect for that accounting period; nor

made an claim for double taxation relief (under TIOPA10/Part 2/Chapter 2) for that same accounting period.

Once an election to be a QIC has effect in an accounting period then the company is not permitted to make either of these claims in respect of that period.

Group elections

The effect of an election to be a QIC can be modified by a group infrastructure election which allows the conditions to be assessed over a number of linked companies.

Previous page

Next page