HMRC - CFM97250 - Infrastructure: Elections For A Transitional Period

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Transitional rules apply in the case of accounting periods beginning before 1 April 2018. These have two effects:

An election to be a qualifying infrastructure company (QIC) can be made in respect of such accounting periods at any time prior to 1 April 2018, and have effect. i.e. the election does not have to be made in the accounting period in question.

A company can fail either the public infrastructure income or public infrastructure asset tests (or both) in such accounting periods, and an election to be a QIC can still have effect. This is subject to the company being able to meet each of those tests in a notional or actual accounting period of at least three months length which includes 1 April 2018.

Where a company qualifies as a QIC for an accounting period by this provision, the amounts in respect of the company which area excluded from tax-interest, tax-EBITDA, group-interest and group-EBITDA under s438, s440, s441 and s442 are reduced on a just and reasonable basis.

Example

A group company (Holdco) holds shares and loans in ten companies incorporated as special purpose companies (‘SPCs’) to hold individual investment properties. Holdco and the SPCs all have 12 month accounting periods ending 31 May 2017 and 31 May 2018.

For the purposes of the example, the value of the shares and loans recognised on the balance sheet of Holdco, as well as its income, are attributable equally amongst its ten subsidiaries. Seven of the companies are qualifying infrastructure companies, by virtue of holding buildings within a UK property business which are let to unrelated persons on a short term basis. However, three do not qualify. Holdco would therefore fail the public infrastructure asset test in the accounting periods ended 31 May 2017 and 31 May 2018.

Nonetheless, Holdco and each of the seven qualifying infrastructure companies make an election on 31 January 2018 to be QICs. On the same day, Holdco disposes of its shares and loans in the three subsidiaries which were not qualifying infrastructure companies. After this date it only holds assets and accrues income which would allow it to pass the public infrastructure income and asset tests.

Considering Holdco:

although the accounting period ended 31 May 2017 has ended, the election was made before 1 April 2018 and is therefore still valid for both periods;

the company would pass the public infrastructure income and public infrastructure asset tests for a deemed accounting period running from 1 February 2018 to 30 April 2018 and as such it can be a QIC for the accounting periods ending 31 May 2017 and 31 May 2018 under the transitional rules;

the amounts excluded in respect of Holdco from tax-interest, tax-EBITDA, group-interest and group-EBITDA are reduce by three tenths in respect of the accounting period ended 31 May 2017;

the amounts excluded in respect of Holdco from tax-interest, tax-EBITDA, group-interest and group-EBITDA are reduce by three tenths in respect of eight months of the accounting period ended 31 May 2018; assuming income accrues uniformly throughout the accounting period this means that those amounts would be reduced by 20%.

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