HMRC - CFM97330 - Infrastructure: Guarantees, Indemnities And Financial Assistance

TIOPA10/S438(5)&(6)

Typically any guarantee, indemnity or other financial assistance provided in favour of the creditor should be taken into account for the purposes of ascertaining whether the recourse of the creditor is sufficiently limited.

So where a non-QIC company has provided a creditor with a guarantee, indemnity or other financial assistance in respect of a particular instrument, then it would normally follow that the creditor would have recourse to non-QIC income and assets. As such, tax-interest expense amounts in respect of the instrument would not be excluded from the interest restriction calculations.

However, guarantees, indemnities and other financial assistance can be disregarded in the following scenarios:

If they are provided before 1 April 2017;

If they are provided by an related person who is not a related to the company;

If they are provided by a {relevant public body}; or

If it is a non-financial guarantees which meet certain criteria.

Guarantees provided before 1 April 2017

Guarantees, indemnities and other financial assistance provided before 1 April 2017 can be disregarded for the purposes of assessing the recourse of a financial instrument.

Accession of guarantors

Some facility agreements may require that new companies in the group accede to the facility as guarantors in certain circumstances. For example, where a newly incorporated company is inserted in the group structure. This will not in itself cause the recourse of the instrument to be tainted, as long as the effect of the guarantee is substantially unchanged as a result of the accession.

Example

An original guarantee was provided before 1 April 2017 on a particular loan facility. The exclusion for pre-1 April 2017 guarantees can still apply to a subsequent accession to the guarantee by another group company where the loan facility and terms of the guarantee remain unchanged (apart from the accession of the new guarantor). The effect of the guarantee should be substantially unchanged as a result of the accession.

Guarantees from unrelated parties

Guarantees, indemnities and other financial assistance provided by a person who is not relate to the company can be disregarded.

Guarantees from relevant public bodies

Guarantees, indemnities and other financial assistance provided by a {relevant public body} can be disregarded.

Non-financial guarantees

Non-financial guarantees can be disregarded for the purposes of determining whether recourse is limited to relevant infrastructure matters where:

The guarantee is for performance by any person of a contractual obligation to provide goods or services to a QIC;

It is given by the person providing the goods or services or by a person who is a related party of that person; and

The maximum amount for which the guarantor is liable does not exceed the consideration given under the contract for the provision of the goods or services.

Example 1

A university contracts with a company to construct student accommodation. The contract for construction is held by a special purpose company (‘SPC’), of which the construction company owns 75% of the ordinary share capital, and the university owns the remaining 25%. Construction is funded by bank debt.

A guarantee is provided by the construction company, providing assurance that the student accommodation will be provided on time and to specification. This guarantee would be considered a non-financial guarantee and therefore the debt will have limited recourse to relevant infrastructure matters.

Example 2

A property investment company holds a block of flats which are let to tenants. The parent provides the company with a guarantee that the accommodation will be fully let each period. This is not a guarantee for performance of a contractual obligation, and the parent, as guarantee, would be considered as providing recourse to the lender outside of relevant infrastructure matters.

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