HMRC - CFM97360 - Infrastructure: Highly Predictable

TIOPA10/S439(5)&(6)

For the purpose of consideration of qualifying infrastructure receipts by reference to qualifying public contracts, receipts are considered highly predictable so far as their value can be predicted with a high degree of certainty because the amounts of receipts, or parts of receipts, are fixed by a qualifying public contract and the factors affecting the volume of the receipts are fixed by a qualifying public contract or are otherwise capable of being predicted with a high degree of certainty.

Example 1

A special purpose company (SPC) is incorporated to hold and undertake a PFI contract with a local authority to construct a toll road, and maintain and operate it for 45 years.

A local authority is the contract counterparty and agrees to make payments to the SPC in each period of the contract in exchange for the road being available for use. Any toll receipts collected are the local authority’s. The shareholders bid for the contract, in competition with others, such that its price reflected the discounted expected cash flows from these receipts and related construction, operation, maintenance and financing costs.

The receipts of the SPC will be considered fixed by a qualifying public contract.

Example 2

A SPC company is incorporated to hold and undertake a PFI contract with a local authority to construct a toll road, and maintain and operate it for 45 years.

A local authority is the contract counterparty and agrees to make payments to the SPC in each period of the contract in exchange for the road being available for use. Any toll receipts collected are for the benefit of the SPC, and the local authority has no control over the pricing. The shareholders bid for the contract, in competition with others, such that its price reflected the discounted expected cash flows from these receipts and related construction, operation, maintenance and financing costs.

Although some of the receipts of the SPC will be considered fixed by a qualifying public contract, those receipts which are based on the use of the road are not. They fail two tests, both of which must be met for them to be considered fixed by a qualifying public contract. The amount of the receipts (i.e. the schedule of toll fees to use the road) is not fixed by the contract with the local authority; and the volume of the receipts is neither fixed by the contract or otherwise capable of being predicted with a high degree of certainty.

Unless the toll fees are expected (on 12 May 2016) to constitute no more than 20% of the total revenue of the SPC from 12 May 2016 until the end of the qualifying period, no loan relationships of the SPC can be qualifying old loan relationships.

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