HMRC - CFM97370 - Infrastructure: Ceasing To Be A Qualifying Old Loan Relationship

TIOPA10/S439(7)-(9)

Amendments to loan relationship

If a qualifying old loan relationship is amended, for example to allow further amounts are loaned or the term of the loan extended, then the exemption will only be available for a proportion of amounts related to the original loan relationship on a just and reasonable basis.

Example 1

A qualifying infrastructure company (QIC) has a qualifying old loan relationship: a £10m loan. On the last day of accounting period ended 31 March 2020, an additional amount is drawn down from the lender such that the loan’s principal is increased to £15m. In the accounting period ended 31 March 2021 only £10m of the loan will be considered a qualifying old loan relationship. The balance of £5m would have to be considered on its own merits as to whether it meets the necessary criteria to exempt the associated interest payments from tax-interest.

Loan facilities

Companies will often have access to loan facilities where the amounts to be loaned are agreed, but the actual drawn down occurs at a later date.

Where a loan facility is entered into on or before 12 May 2016 and amounts are drawn down before this date, then the facility will fall to be a ‘qualifying old loan relationship’ under s439.

As long as a loan relationship existed on or before 12 May, then further amounts drawn down after 12 May 2016 under the same facility could be part of the original loan relationship and as such be considered to be part of the original qualifying old loan relationship. Whether additional amounts drawn down are part of the original loan relationship would depend on the particular facts and circumstances. HMRC would be able to provide assurance on this through its non-statutory clearance service.

However where a loan facility is agreed on or before 12 May 2016 and the first substantial amount is not drawn down until after 12 May 2016 the facility cannot be considered to be a qualifying old loan relationship because as of 12 May 2016 there is no money debt in place. As such, there cannot be a loan relationship in place and therefore there cannot be a qualifying old loan relationship.

Where a loan facility is amended after 12 May 2016, then it is only the amount and term of the original loan facility that will fall into the grandfathering provision under s439.

Changes to assets held

A QIC which has a qualifying old loan relationship may acquire and dispose of assets.

At any time after such a change in the assets held, the QIC must consider the assets it holds and whether, if it had held those assets at 12 May 2016, it would have met the conditions necessary for its loans to be qualifying old loan relationships (i.e. 80% of the total value of the company’s future qualifying infrastructure receipts (QIRs) for the qualifying period was highly predictable by references to qualifying public contracts).

By virtue of the meaning of qualifying infrastructure receipts, in considering the assets of a company, where these include shares in, or debt issued by another company, account must also be taken of changes in the assets of that company.

If following a change in the assets held by QIC which has a qualifying old loan relationship, it would not have met the conditions necessary, the loan relationship will cease to be considered a qualifying old loan relationship at that time and any subsequent time.

Example 2

Company A has a 31 December balance sheet date. It had borrowed from its parent in order to acquire the assets it held. As at 12 May 2016 it held:

an asset X, which generates QIRs which, for the qualifying period, are highly predictable by reference to a qualifying public contract (‘good QIRs’);

an asset Y which generated qualifying infrastructure receipts which were not considered highly predictable; and

shares in Company B, which did not generate any QIRs (good or otherwise) and did not undertake qualifying infrastructure activities.

Company A disposed of Company B on 31 December 2019, and at this point (holding only assets X and Y) it met the conditions to be a QIC and elected as such for the following accounting period ended 31 December 2020.

For the accounting period ended 31 December 2020, Company A considered whether its loan from its parent was a qualifying old loan relationship. In order to do so it reviewed the discounted cash flows of QIRs from both assets X and Y from 12 May 2016 for the qualifying period in order to understand establish what proportion which would be considered good QIRs (and whether greater than 80%).

Example 3

Company A’s only asset is shares in Company B, its wholly owned subsidiary. Both have a 31 December balance sheet date. Company A has a loan from its parent which it used to fund acquisition of Company B’s shares. Company B, as at 12 May 2016, only owned asset X which generated good QIRs.

Company B acquired asset Z on 1 January 2021. This asset, although under construction on 12 May 2016, did not generate revenue until 30 June 2017.

For the accounting period ended 31 December 2020, Company A considered whether its loan from its parent was a qualifying old loan relationship. In order to do so it reviewed the discounted cash flows of QIRs from both assets X and Z from 12 May 2016 for the qualifying period, in order to understand what proportion of the dividends receivable from Company B would be considered good QIRs (and whether greater than 80%).

In this context, if a company acquires a public infrastructure asset for which construction or conversion had not commenced at 12 May 2016 (or shares in / debt issued by a QIC holding such public infrastructure assets), qualifying infrastructure receipts in relation to such assets cannot be considered highly predictable.

Example 4

A QIC, Company A, has a qualifying old loan relationship: a £100m loan. The loan relationship qualifies on the basis of the only assets the company owns: shares in two qualifying infrastructure companies holding PFI contracts which generate highly predictable qualifying infrastructure receipts.

Company A disposes of the shares in one of the companies and acquires shares in another company holding a PFI contract. This PFI contract was for the design, build, finance, maintenance and operation of a hospital; the tender process ran from 1 July 2015 and ran until 30 June 2016 where ‘financial close’ was reached. Construction began shortly thereafter, and the hospital was completed and ready for use on 31 December 2017. As the hospital was not in the process of construction at 12 May 2016, it will not be considered to generate qualifying infrastructure receipts which are highly predictable. On the basis that Company A’s receipts are broadly equal from both of its investments, its loan relationship will cease to be a qualifying old loan relationship at the point it acquires the shares in the new company.

Extension of Existing Assets

A Qualifying Infrastructure Company may have taken a loan out to fund a public infrastructure project that contains assets where a highly predictable income stream is generated by reference to the qualifying public contract. This loan has fulfilled the conditions to be a qualifying old loan relationship. What happens if the public body wants to extend the contract with the need to construct more of the same assets but no further loan finance is required?

In this case the extension to the project is regarded as an extension to the original assets and is not regarded as a new asset. The extension is not regarded as an infrastructure asset that did not exist or was not in the course of being constructed or converted on 12 May 2016 for the purposes of TIOPA 2010/s439(9)(c). In this case the loan relationship is preserved as a Qualifying Old Loan Relationship. This assumes that the terms of the original Qualifying Old Loan Relationship are not amended.

For example a QIC could be constructing a Windfarm. If after 12 May 2016 the project was extended to include further windfarm assets which are the same or essentially similar to those in the original project then the extension of the project would not change the status of the original qualifying old loan relationship that was put in place to fund the original project. This assumes that the terms of the original qualifying old loan relationship remain unchanged. However if the assets of the original contract are sold off and the original loan relationship is in place then this loan relationship will cease to be a qualifying old loan relationship.

Previous page

Next page