HMRC - CFM97390 - Infrastructure: Interaction With The ‘De Minimis’ Provisions

TIOPA10/S443

In general, in a period of account where a worldwide group includes a qualifying infrastructure company (QIC), the de minimis provisions are not taken into account in calculating the interest capacity of that group.

However, there may be some circumstances in which this would limit a group’s deductions for tax-interest to less than the de minimis amount. There are therefore further rules to ensure that the group’s deductions for aggregate net tax-interest expense are never restricted below the de minimis amount.

These rules work by comparing:

the total disallowed amount of the group in the period calculated as if Chapter 8 applies (and therefore the de minimis is not available) – the ‘Chapter 8 amount’; and

the total disallowed amount of the group in the period calculated as if Chapter 8 was not applied, but interest capacity of the group was restricted to £2m i.e. the de minimis – the ‘ordinary amount’.

In an accounting period in which the Chapter 8 amount exceeds the ordinary amount, the rules in Chapter 8 are switched off and the interest capacity is taken to be the de-minimis amount.

However, from 1 January 2018, these rules do not apply to a worldwide group that has QIC (Q) that receives tax-interest income (that is not insignificant) from another QIC which is not in the same worldwide group as Q but which is a related party of Q. Where this applies the group must apply the infrastructure rules to Q.

Example

Company A and Company B are in a group together. Company B is a QIC.

Column ‘No Chapter 8’ reflects interest restriction which would arise if Company B had not made an election to be a QIC which had effect for the accounting period. Interest capacity of the group would be £3m, by reference to the fixed ratio method.

However, Company B is a QIC. The Chapter 8 amount for the group would therefore be £1.5m, as there is no tax-EBITDA in Company A to generate interest capacity and the de minimis is not available.

The ordinary amount would be £0.5m. As this is lower than the Chapter 8 amount, the interest capacity of the group will be £2m for this accounting period.

Application of the above exception is not considered a revocation, and as such a comparison of the Chapter 8 amount against the ordinary amount may be required accounting period on period.

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