

Minutes of WG2 Meeting

10am – 10.45am Monday 7 April 2014

HMRC, Right Auditorium, 1 Horse Guards Road, London, SW1A 2HQ

Attendees

Ann Brennan (GE / BBA Rep)
David Boneham (CIOT / Deloitte)
Lara Okukenu (Deloitte)
Graham Williams (PwC)
Andrew Seagren (KPMG)
Catherine Linsey (ECI Partners)
Lydia Challen (A&O / Law Society)
May Lam (ABI / Prudential)
David Gregory (Grant Thornton)
Jonathan Richards (Ernst & Young)
Stuart Sinclair (Bingham McCutchen)
Andrew Hastie (LBG)
Vincent Maguire (Clifford Chance)
Kevin Cummings (BDO)
Graham Iversen (Slaughter and May)

(collectively the “group”)

Tony Sadler (HMRC) - **Chairman**
Judith Diamond (HMRC)
Mark Lafone (HMRC)
Richard Daniel (HMRC)
Liz Ward-Penny (HMRC)

(collectively “HMRC”)

Apologies

Alex Jupp (Skadden)
Nikol Davies (Taylor Wessing)

1. Introductions and background

HMRC confirmed that the intention of the meeting was to focus on the document circulated on 3 April 2014 which summarised the issues for future consideration in Working Group 2.

HMRC welcomed comments from the group regarding any issues they felt need to be added to the list.

2. Partnerships and consequentials

HMRC ran through the following matters which had been discussed in prior working group meetings and were due to be discussed with parliamentary counsel within the next few weeks following which revised draft legislation would be circulated.

- Section 380A(4): the interaction of this requirement to use the firm’s accounts with other provisions that specify accounting treatment (e.g. section 349) and provisions that impose a different rule (e.g. group continuity rules)
- Section 380A(7): whether ‘appropriate share’ should be qualified in some way; whether reference to ‘period of account’ is appropriate; whether reference to loan relationship profits/losses is appropriate.
- Section 380B: whether an extended meaning of Chapter 4 (novations) is necessary.
- Section 380D: greater clarification of the policy aim needed; whether it should be restricted to a ‘specified/relevant’ change in profit shares; whether section 380D(3) and (4) are needed; the definition of ‘appropriate share’.

In addition to this, HMRC were also committed to extended the approach to other transparent entities, drafting equivalent provisions for Part 7 CTA 2009 and drafting CFM guidance on new legislation.

It was acknowledged that the deadline for publishing partnership legislation is now in line with other Finance Bill 2015 matters and accordingly less pressing.

3. Debt Restructuring

HMRC confirmed that instructions had been passed to parliamentary counsel for the drafting of a new corporate rescue exemption modelled on the WG2 / R3 proposal. HMRC felt this clearly demonstrated an area where the loan relationships / derivative contracts rules were being modernised in line with commercial reality.

As part of the introduction of a new corporate rescue exemption, HMRC flagged a number of additional areas which would need to be addressed:

- Could the new corporate rescue exemption replace current insolvency conditions?
- Should the drafting include provision for amend and restatement credits? HMRC expressed concern on how to tax reversals e.g. if the new liability were recognised in different company or if the amend and restatement was simply the result of a liability management exercise and not a corporate rescue. Accordingly, any legislation would need to be appropriately tailored.
- Sections 361A and 361C would also need to be considered in the context of the new corporate rescue exemption as it was felt perverse to deem a release when a real release occurs later on down the line.
- Section 359 fix to deal with sequencing anomaly - arguably section 359 does not apply (for instance) where a company moves from administration to liquidation and a loan relationship is released following administration.

Members of the group commented that the possibility of amend and restatement credits arising where companies are transitioning to new accounting framework should also be on the agenda.

A member of HMRC commented that an amend and restatement occurring in the comparative year should create less of a tax impact than should the event occur in the actual year of transition. This is on the basis that any transitional credit should be spread over a period of 10 years in line with the change of accounting practice regulations (as opposed to taxed immediately). The unwind discount (in both scenarios) would then likely unwind over a period quicker than 10 years.

Members of the group acknowledged this but commented that if the policy aim is not to tax amend and restatement credits going forward then the same should arguably also apply on restatement.

Another member of the group also commented that if a debt was restructured following an amend and restatement date, then it is feasible that the unwind debits would be restricted whilst the amend and restatement credits continue to be spread (or having been taxed immediately) resulting in a mismatch.

HMRC committed to investigating the area further.

4. Connected companies and group continuity

HMRC commented that following consultation, connected companies and groups appeared to be areas both in the "tidy-up" bucket as opposed to warranting significant change. Whilst not all members of HMRC agreed with this sentiment, it did represent a majority view and accordingly would be the sentiment set out in HMRC's technical paper.

Some of the provisions subject to minor change and discussion include:

- Section 352: Whether the restriction should be limited to impairment / credit losses or apply to all debits including for example a debit arising on early redemption of debt purchased at a premium.

To the extent that section 352 is limited to impairment / credit losses how to bifurcate the profit or loss on disposal between the 'impairment' piece and 'other' piece.

- Section 362: Clarification on the policy intention regarding partial debt releases. It was felt that this would be best approached through CFM guidance as opposed to statutory change.
- Degrouping rules: The Finance Bill 14 change now brings into account both debits and credits. HMRC are proposing to introduce new CFM guidance to clarify the policy intention.
- Late interest rules & Connected parties: Proposal to repeal the late paid interest rules so far as they relate to connected parties. HMRC noted that there had been push back from some business sectors as these rules had previously been regularly used to access trapped losses. HMRC indicated that the wider issue of group loss utilisation might be something considered in the context of a different forum – it went beyond the scope of the loan relationships and derivative contracts consultation. Nevertheless, HMRC's view was that it was not an appropriate use of an anti-avoidance provision and they did not propose to resist the planned repeal of the late paid interest rules in so far as they applied in respect of connected parties.

HMRC noted that a number of other inconsequential changes (listed in the document circulated on 3 April 2014) were also in the pipeline but that it was not proposed to discuss these in detail at this meeting.

5. Overlap with other working groups

HMRC commented that a number of areas also overlapped with other working groups. Accordingly, those areas would not be looked at in isolation.

6. Next steps & Timing

The next meeting was due to be held on 29 April 2014.