

**Modernising the taxation of corporate debt and derivative contracts**  
**Minutes of Working Group 3 meeting on 3 February 2014**  
**100 Parliament Street 10.00 to 12:00**

**Attendees:**

Andrei Belinski, Centrica  
Paul Freeman, KPMG  
Victoria Heard, KPMG  
David Hill, Grant Thornton  
Matthew Hodkin, Norton Rose  
Chris Kell, HSBC  
John Lindsay, Linklaters / CIOT  
Anne Murphy, Legal & General / ABI  
Kieran Sweeney, LBG  
Fiona Thomson, Ernst & Young  
Stephen Weston, Deloitte  
Charles Yorke, Allen & Overy  
Graham Williams, PwC

Richard Daniel, HMRC  
Rob Harvey, HMRC  
Andy Stewardson, HMRC

**Apologies:**

Jackie Latham, Rolls Royce  
David Boneham, Deloitte

**1 Administration and points from earlier meetings**

*Working group minutes*

- 1.1 The draft minutes of the WG3 meetings on 8 November and 6 December 2013 had been circulated. Any comments on these should be forwarded to Richard Daniel.

*Changes to the Disregard Regulations*

- 1.2 A very early draft of a replacement for Regulation 6 of the Disregard Regulations had been circulated. At the moment HMRC were only looking for comments on the general approach rather than any detailed drafting points.

### *“Triage” of proposals*

- 1.3 Ahead of the Budget on 19 March, HMRC were seeking to review the various proposals currently under consultation with a view to categorising these as:
- “Box A” – Flagship changes contributing significantly to the objectives of the project, attracting a reasonable level of support and where a high level of return was expected for the resources required to take them forward.
  - “Box B” – Other changes contributing to the objectives of the project, attracting a reasonable level of support and where the return would justify the resources required to take them forward.
  - “Box C” – Proposals it was not intended to pursue.
- 1.4 This process was being undertaken partly in recognition that the General Election in 2015 may limit the legislative scope available to the project and that it was therefore important to focus resources on those proposals felt to be most worthwhile. It was noted that HMRC intended to issue a technical note in due course setting out the direction of travel.
- 1.5 In this context it was noted that whilst the amalgamation of Parts 5 and 7 CTA 2009 was being retained as a medium-term objective, HMRC no longer viewed this as a Finance Bill 2015 item. This was because the consultation responses to the proposed amalgamation had been ambivalent, the gains from pursuing it were expected to be limited and implementation was likely to require significant effort.
- 1.6 A question was raised as to whether it would be possible to relieve any pressure on bill space by making some changes (e.g. in relation to forex or hedging) through secondary legislation. HMRC’s view was that the use of secondary legislation risked increasing complexity and would be unlikely to be accepted as an appropriate mechanism for implementing any major changes.

## **2 Foreign exchange**

### *“Permanent as equity” loans*

- 2.1 HMRC regarded resolving the issues previously identified with “permanent as equity” loans as an immediate priority. This needed to be in place ahead of transition in FY15. The current expectation was that the necessary secondary legislation would be enacted before the summer recess.
- 2.2 It was noted that HMRC were keen to ensure that no difference in treatment would be available to taxpayers by choosing to transition early.

### *Treatment of non-trading forex*

- 2.3 A paper had been circulated providing an overview of the different approaches to the taxation of foreign exchange gains and losses. The choice of starting position (i.e. whether amounts were taxable or non-taxable) would in turn dictate the pressure on the hedging rules and so this was an important point to resolve. HMRC did note, however, that some update to the Disregard/EGLBAGL Regulations was likely to be required either way.

- 2.4 HMRC had hoped that taking non-trading forex gains and losses out of taxation would simplify the rules and remove an area of uncertainty for both HMRC and taxpayers.
- 2.5 The view of several non-HMRC participants was that radical change to the taxation of forex would risk creating problems and uncertainty, particularly in relation to the trading/non-trading distinction, and that it was therefore unclear that there would be any overall increase in protection to the Exchequer so as to justify such a change. Similar concerns were expressed in relation to the idea of allowing companies to elect in/out of an exemption regime.

### 3 Hedge accounting and interaction with the Disregard regulations

#### *Overview*

- 3.1 HMRC's current view was that changes in this area were likely to fall within "Box B". The expectation was that any approach would involve overriding the accounting treatment and retaining rules broadly equivalent to Regulations 7, 8 and 9 of the Disregard Regulations.
- 3.2 Regulation 9A was expected to be superseded by the move to a "follow the p&I" approach (a "Box A" change) and other complexities in the existing regime would be reduced by the changes proposed to the rules for connected companies' loan relationships. Going forward the changes should mean that for a designated hedge it should be possible to simply follow the p&I for tax purposes in all cases (with the possible exception of hedges of regulatory capital instruments).
- 3.3 A key area of difficulty was whether the regime should be opt-in or opt-out and the rules governing the timing of any election.

#### *Comments on draft regulations circulated*

- 3.4 It was noted that the draft had been prepared on the assumption that elections should be prospective only. HMRC confirmed that they continued to be uncomfortable with any retrospective element to the elections. Whilst the practical benefits of making elections at the same time as submitting the relevant tax return was recognised, it was difficult to see how this could be achieved without creating scope for avoidance.
- 3.5 HMRC also noted that possible changes to FRS 101 to give more flexibility in hedge accounting may also be relevant to determining the approach to be taken to elections in or out of the new rules.
- 3.6 In thinking through the issues HMRC were seeking to distinguish between:
- companies which did not want volatility and which were unable to hedge account;
  - companies which did not want volatility and which were able to hedge account; and
  - companies which were relaxed about volatility.

It was only in relation to the first of these categories that a clear need for an equivalent of the Disregard Regulations was thought to exist.

- 3.7 HMRC intended to give further thought to how to approach the question of elections and may seek to circulate an updated draft towards the end of March. The key question from HMRC's perspective remained how it would be possible to allow more time for elections to be made without creating significant Exchequer risk.
- 3.8 One possibility which HMRC continued to see as possibly advantageous in this regard was for the treatment currently given by the Disregard Regulations to become opt-in. This would only potentially cause difficulties for undesignated hedges and may make it easier to allow a longer period for companies to opt-in to the regime.
- 3.9 It was noted by the non-HMRC participants that it may be helpful to introduce some sort of threshold so as to allow greater flexibility over the timing of elections for smaller companies, which were perceived to be at greater risk of otherwise missing the opportunity to make these.

#### **4 Hybrids and property derivatives**

- 4.1 HMRC currently regarded the proposals to repeal the detailed rules for property derivatives and holders of convertible instruments as being "Box A" or "Box B" items. This was because although not many taxpayers were thought to be affected, the proposals would allow for a significant simplification of legislation which had previously been the target of attempted exploitation.
- 4.2 Changes were expected to be made in Finance Bill 2015 with a view to them taking effect from 1 January 2016.