

Minutes of WG2 Meeting

10am – 12am Monday 20 October 2014

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

Attendees

Andrew Hastie (LBG)
Paul Baldwin (FTI Consulting)
David Boneham (CIOT / Deloitte)
Alex Jupp (Skadden)
Kathryn Hiddleston (Grant Thornton)
Paul Miller (Ashurst)
Steffan Adfeldt (BDO)
Catherine Linsey (ECI Partners)
Andrew Seagren (KPMG)
Zack Citron (GE)
Lydia Challen (A&O / Law Society)

(collectively the “group”)

Tony Sadler (HMRC) - **Chairman**
Mark Lafone (HMRC)
Roger Bath (HMRC)
Richard Daniel (HMRC)
Liz Ward-Penny (HMRC)
Andy Stewardson (HMRC)
Alia Islam (HMRC)

(collectively “HMRC”)

Apologies

Adam Blakemore (Cadwalader)
Graham Williams (HMRC)
David Gregory (Grant Thornton)
Jonathan Richards (Ernst & Young)
Nikol Davies (Taylor Wessing)
Vincent Maguire (Clifford Chance)
Gavin Little (KPMG)
Ann Brennan (GE / BBA Rep)

1. Introductions and background

The purpose of the meeting was to take stock of the position on debt restructuring, connected companies and partnerships. It was noted that the meeting on the 26 September had been cancelled. Discussion papers on debt restructuring had been circulated on 23 September and 6 October, and new draft legislation on partnerships had been circulated on 17 October.

HMRC mentioned that there has been a delay with the meeting notes being published on the HMRC website which will be updated as soon as possible

2. Debt Restructuring

In the revised draft legislation and guidance the measure was set out in two provisions – a new section 322(5B) CTA 09 dealing with exemptions from credits on debt releases in company distress situations, and a new section 323A providing an equivalent exemption in modification and replacement (‘amend and extend’) situations. Both sections draw upon the Insolvency Act definition of a company being unable to pay its debt.

There was discussion about whether new section 323A should deny debits for subsequent accounting reversals relating to the modified or replaced debt. The view of some members of the Working Group was that this would leave recovering companies with a future tax liability which would put them at a comparative disadvantage with other companies that had been released from debt. HMRC’s view was that legislation was consistent with the broader policy to negate the timing disadvantage in such cases. HMRC saw that a complete exemption would give affected companies enhanced tax relief, and hence provide a competitive advantage compared with companies that had not undergone a debt restructuring exercise. In “amend and extend” cases HMRC were concerned that this could be vulnerable to abuse, and that going further than simply negating the timing effect would result in an Exchequer cost. It was

noted that this was a point of difference between HMRC and some members of the Group but HMRC did not now envisage significant changes to the legislation as published.

HMRC would make changes to the draft guidance as suggested by members of the Working Group and would welcome further suggestions for improvements.

HMRC sought views on the removal of the reference to amortised cost in section 322 in order to deal more satisfactorily with cases in which companies make fair value adjustments on account of hedging instruments. HMRC would consider the point further and come forward with proposals.

3. Connection

It was noted that the proposal to amend section 359 will go forward.

A suggestion had been made to extend section 357 to include creditor companies that are within the new section 322(5B). HMRC did not think this would be feasible and it was noted that companies within section 357 would themselves be able to access new section 322(5B) in respect of their debtor relationships.

HMRC considered that the proposed amendment to section 352 was still not satisfactory in that it did not take into account the changes arising from acquisitions other than at a premium. There was a discussion whether section 354 takes precedence over section 352. HMRC envisaged further changes to the proposals on section 352.

HMRC confirmed that the repeal of the late interest rule as it applies to connected companies and major interest companies would go ahead, as would the removal of the equivalent provision for deeply discounted securities of connected companies. It was noted that existing arrangements would be grandfathered.

4. Partnerships

New draft legislation on partnerships had been circulated on 17 October. It had not been possible for the Working Group to consider this before the meeting. HMRC acknowledged that further work was needed on this strand of the work of Working Group 2, in particular on changes in partnership shares.

5. Timetabling

HMRC advised that it was understood that the pre-election Finance Bill in 2015 would be primarily concerned with essential legislative changes. It appeared more likely that legislation related to the loan relationship review would be included in a post-election Finance Bill. Where it was not possible to get legislation into a state of readiness for this, then it is likely that the legislation would be deferred to 2016. This is likely to be the case for changes on partnerships.

It was also noted that certain provisions would take effect from 1 January 2015 in particular that relating to debt restructuring and the TAAR. Amendments to the Change of Accounting Practice Regulations to include credits arising on modification and replacement of distressed debt would also need to take effect from 1 January 2015.

The timetable of any legislative changes may be subject to other proposals in this area, such as those relating to the Base Erosion and Profit Shifting (BEPS) project.

6. Next Steps and meeting

The date of the next meeting is on 27 November, 10:00-12:00, 1 Horse Guards Road. This meeting will focus on the draft legislation changes relating to partnerships which will be discussed in more detail.