Minutes of WG1 meeting on 30 April 2014

The discussion focussed on two areas:

1. Feedback/re-cap in relation to looking behind the accounts and recognition/de-recognition meeting held on 15 April 2014; and
2. Loan relationship regime TAAR.

1. Feedback/re-cap on 15 April 2014 meeting

HMRC noted that the focus of the meeting on 15 April was to consider loan relationships with "interference" or something outside the loan relationship regime that alters the accounting treatment. There were four scenarios discussed:

1. One party with a loan relationship and something else that impacts its accounting treatment;
2. Two parties, one item. This item focusses on the tension between the legal and accounting tests under the loan relationship regime.
3. Fiscal transparency;
4. A company that has been party to a loan relationship and still recognises debits/credits for a period of time after it ceases to be a party.

1. One party two items

For example, hedge accounting, distributions in specie and tax avoidance involving altering the accounting treatment. HMRC's proposal at the moment is to follow the accounts but to have specific supplementary rules to target these situations (e.g. hedge accounting, capitalised interest rules etc.)

2. Two parties, one item

The group noted that it is desirable to have clear tests in this case with specific rule overriding the ordinary treatment in certain cases.

The group concluded that repos, reverse repos and stock relationships are already dealt with satisfactorily under current legislation. However, this may not be the case for sub-participation arrangements and unsuccessful securitisations, and therefore additional rules may be needed in those cases.

3. Fiscal transparency

This was not discussed at length, but generally involves fiscally transparent entities holding loan relationships. The broad proposal is to extend the partnership deeming rules to all fiscally transparent entities.

4. Company ceases to be party to loan relationship

If a company ceases to be a party to a loan relationship but does not derecognise it for accounting purposes, it is still subject to tax on the debits/credits under s 332 CTA2009.

The group discussed the possibility of giving priority to the accounting treatment more generally (i.e. if a company recognises debits/credits in respect of a loan relationship it is subject to tax notwithstanding that it may not be legally party to the loan), but noted the possibility for double taxation in respect of the same loan relationship. The group also discussed specific carve outs, whether there would be any deemed knowledge in respect of how the other party accounts for the loan, and whether a "reasonable to assume" test might be used.

The group was concerned about the possibility for differing interpretations of accounting standards which may lead to double taxation. The group therefore favoured targeted rules for specific cases, but queried whether this was practically possible.

2. TAAR

The group discussed when the unallowable purpose rules would operate instead of the TAAR. For example, in the case of a company deciding whether to raise funds through debt or equity, this should ordinarily be the domain of the unallowable purpose rules rather than the TAAR. However, if for some reason the debits/credits in respect of the loan relationship were not recognised, then this would instead be the domain of the TAAR.

There was broad discussion regarding the *Greene King Case*. The group believed that the TAAR should not apply to the debtor in that case, but only to the creditor. However, HMRC was concerned that the creditor may also be outside of the TAAR as currently drafted.

Broadly, schemes that simply seek to increase the leverage of a company should not be caught by the TAAR because the thin capitalisation, TP and unallowable purpose rules operate in that area. That is, the TAAR requires an abuse[1] of the loan relationship rules rather than simply an excessive tax benefit.

For example, a tax advantage may arise if a loan relationship is transferred to a company with losses or a CFC with no income pick-up. This is not necessarily a failure of the loan relationship rules, and should therefore not be impacted by TAAR.

The group believed the best way to resolve where the TAAR would and would not apply would be for HMRC to include a non-exhaustive "black list" which gives taxpayers a flavour of the types of transactions that are caught. This could also assist with determining which existing regime TAARs could be repealed as a result of the new TAAR. HMRC agreed with this approach. It was expected that any existing un-repealed TAARs would be applied before the new regime TAAR would be considered.

---

[1] In the context of this discussion the term 'abuse' was not used in the sense of the GAAR, but rather in the 'abuse of rights' sense applied in the *Halifax* VAT case.