

Minutes

TALC Subcommittee: 'BEPS Implementation' Meeting

Date: 7 June 2022

Location & Time: TEAMS Meeting 10.00 am

DEBRA

- Revenue provided a comprehensive update on the DEBRA proposal. The Commission mentioned DEBRA at a high-level meeting in Brussels last week but the first technical meeting on DEBRA at EU level will be held later this week. Revenue's International Tax Division will attend and will be happy to talk with this group again, if asked. The intention of the proposal is to encourage equity financing over debt financing and it is intended to apply to all corporate taxpayers. There is an exemption for certain financial undertakings specified in the proposal. Transposition will have to be achieved by 31st December 2023 and the rules will come into force with effect from 1 January 2024. There are a number of issues arising from the proposal, for example, it is not clear that the proposal is well targeted given the objective, and it does not seem to take account of the treatment of the investor in relation to equity investment. There may also be issues in relation to the interaction between the ATAD ILR and DEBRA. Furthermore, there would be an additional compliance burden imposed on taxpayers who would be required to operate two sets of rules. Interaction with Pillar 1 and Pillar 2 will also need to be considered. Revenue welcomes comments from practitioners on the proposal.

DAC7

- Revenue provided an update on the DAC7 working group which has met three times, the 5th May being the most recent meeting. Revenue noted that detailed discussions have taken place at these meetings in relation to the practical issues facing platforms and the application of various definitions and concepts contained in DAC7. Revenue had hoped to circulate the draft DAC7 regulations by the end of May, while there has been a slight delay in the circulation they will be issued to attendees prior to the next meeting which is scheduled for 23rd June. The focus is now moving to drafting guidance for platform operators for DAC7. Revenue also noted that the DAC7 IT build had commenced.

Anti-hybrid rules and reverse hybrid rules

- Revenue received both general and specific feedback on the draft TDM that had been circulated to practitioners. The general topic of 'partnerships' is still being examined and the Revenue teams are working collaboratively together on the issues so that the wording for the TDM can be finalised. Revenue gave a comprehensive update on the key points (specifically, the application of the rules to 'notional amounts', the conditions relating to 'diversified portfolio of assets', the application of the financial instrument rule where there is a payment to a tax transparent partnership and the concept of 'significant influence') from the feedback received.

ATAD Interest Limitation Rules

- An updated draft of the TDM has been circulated and comments are requested by Friday 17th June. Revenue gave a comprehensive overview of the comments/feedback with respect to which the latest draft TDM has not been amended and the reasoning behind that. These items included:
- No change is considered necessary to the guidance where it states “An ultimate parent entity may be a partnership where the partnership is an entity that prepares consolidated financial statements”.
- Feedback was received which stated that “Additional focus could be given to the accounting by an “investment entity” under IFRS10 or an “investment company” under the US GAAP equivalent whereby there can be a line-by-line recognition of the assets and liabilities, but which does not amount to a consolidation of the subsidiary”. Revenue requested clarity as to the issue that needed to be addressed in the guidance.
- No change is considered necessary to the guidance where it states “Where a minority interest is held in an entity and the entity is consolidated in the ultimate financial statements, with the claims of the minority interest recognised as a line item in the ultimate financial statements, the entity will be considered to be a consolidating entity in respect of the ultimate parent.”
- No change is considered necessary to the guidance where it states “An interest group is made up of all companies within the charge to corporation tax”.
- No change is considered necessary to the guidance with regard to trading lessees who enter into operating leases.
- No change is considered necessary to the example dealing with factoring transactions, in relation to transaction fees which would need to be assessed as to whether they fall into the definition of interest equivalent on a case by case basis.
- No change is considered necessary to the example dealing with securitisation. Members were directed to the updated NPL examples with regard to the principles outlined in respect of cashflows exceeding and/or below expectations on the acquisition of a loan portfolio.
- No change is considered necessary to the example dealing with commodities.
- No change is considered necessary to the example dealing with legacy debt and the FIFO basis with regard to repayments. The example provides guidance in a scenario where the facts do not support a different conclusion to FIFO. The application of the law will always be facts driven.
- It is not felt appropriate that further guidance be given with regard to what may constitute the “provision, upgrading, operation or maintenance” of a large-scale asset.
- Guidance was requested long-term infrastructure projects where revenues may not crystallise for a number of years after the project is completed and the facility becomes operational including confirmation recognising this fact and noting that the condition for income to arising in a Member State will be met even where the income from the project has not yet arisen. Revenue requested clarity on the circumstances where an interest expense may be deductible prior to the recognition of income.
- An example demonstrating provisions requiring a gross up or down from the 33% rate to the 12.5% rate was not considered necessary as examples have been provided with regard to 25% income.

- By definition, a trustee company holding shares in two bankruptcy remote companies may make those companies associated under the tests in 835AA, as both will be associated with the same trustee (and cannot be standalone entities). Draft guidance states that Revenue is prepared to accept that two enterprises will not be considered to be associated solely by the fact that their shares are held on trust by the same nominee or trustee, where there is no other association, as defined, between the enterprises.
- The consolidation test is a facts based test and Revenue confirmed that if it is discovered after a tax return has been filed that an entity was consolidated and as such cannot avail of the single company worldwide group provisions, then the return has been filed based on an incorrect fact and will need to be amended

Branches

- Revenue has received feedback in relation to the draft TDM and gave a comprehensive update in relation to that feedback. As a general point, Revenue confirmed that they will update the TDM, if appropriate, as issues arise. In relation to documentation requirements for medium sized enterprises, this will depend very much on the facts and circumstances of each case.

In relation to penalties and possible penalty mitigation, it is up to the taxpayer to make reasonable efforts to comply. The question as to what constitutes reasonable efforts will depend on the facts and circumstances in each case. The draft TDM had outlined some factors that may be considered. Revenue will add further detail on the frequency with which documentation should be prepared, similar to the language in section 8.4 of the Transfer Pricing TDM.

Revenue confirmed that the new section applies for accounting periods commencing on or after 1 January 2022. Revenue also confirmed that they did not propose to update the TDM to specifically reference MAPs, as it was not felt necessary.

Transfer Pricing

- Revenue has circulated the draft section of the TP TDM and requests feedback by 24 June.

Attendees of meeting of 7 June 2022:

CCAB – I:	Enda Faughnan, Gearoid O’Sullivan, Paschal Comerford
ITI:	David Fennell, Anne Gunnell, Peter Reilly, Gareth Bryan, Emma Arlow
Law Society:	Caroline Devlin, Andrew Quinn, Gerry Thornton, Niamh Caffrey
Department of Finance:	Brian Feehily, Evan Lombard, Ciaran Conroy
Revenue:	Jeanette Doonan, Áine Hollingsworth, Tony Barrett, Keith Noonan, John Quigley, Mary Breen, Ashling Gallagher, Yvonne Ruane, Brendan O’Hara, Lauren Carroll, Audrey Bridgeman