

Minutes

TALC Subcommittee 'BEPS Implementation' Meeting

Date 6 July 2020

Location & Time Skype Meeting 10.00

Introduction

Minutes of meeting of 5 February 2020 were approved by all attendees.

Item 1: DAC6

- There was a general discussion on issues pertaining to the DAC6 guidance in advance of a more focused discussion on Hallmark C. The issues were as follows:
 - - Auditors

CCAB-I queried the position of auditors in terms of them being considered intermediaries. Revenue advised that whether an auditor is an intermediary would depend on their level of involvement and level of knowledge with respect to a reportable cross-border arrangement. However, it is unlikely that a person carrying out a routine service, such as a routine audit, would come within the definition of intermediary. Revenue referred to the section of the DAC6 guidance on the meaning of intermediary, which includes a paragraph on the provision of routine services. Revenue indicated that they would review the paragraph to assess whether the type of situation referred to by the CCAB-I would be covered off in this paragraph.
 - Tax and Duty Manual

It was noted by practitioners that not all of their queries had been covered off in the guidance as published. Revenue acknowledged this and explained that the guidance is intended to be general in nature. While examples of some specific types of transactions are included in the guidance for illustrative purposes, it does not cover off every type of situation that could arise and it is not intended to do so. Revenue indicated, however, that the guidance is a living document and that it is likely that further revisions would be made to it in the coming months, in particular in relation to the guidance on the hallmarks.
 - Tax reference number – deferral of filing

The ITI asked what the position is if the reference number is unknown, given that filing has now been deferred. Revenue stated that the number is only required if it is known at the time that the return is filed.
 - Nexus to Ireland

The Law Society raised the issue of staff who are registered to a professional body/association in Ireland but such registration is a secondary one. Could this person come within the definition of intermediary? Revenue stated that it is possible that the person could come within the definition. The Law Society opined that there is concern that, for example, a non-EU person providing a random service who is registered with a professional association in Ireland could come within the definition and this may not have been intended. Revenue will examine this issue in further detail.

➤ Reliefs - exemptions

The ITI noted that the use of certain Irish tax reliefs and exemptions have been excluded from the scope of reporting under Hallmark A.3. They indicated that it is likely that similar exclusions would be sought in respect of the use of foreign tax reliefs and exemptions that are considered to be equivalent to these Irish tax reliefs and exemptions. Revenue explained that the exclusions had been included on the basis that it was considered such exclusions were within scope of the DAC6 and noted that Germany had taken a similar approach. However, Revenue do not consider that excluding from reporting the use of non-Irish tax reliefs and exemptions, which involve no Revenue oversight, would be in keeping with the requirements of the DAC6.

➤ Online form

CCAB-I asked when the online reporting system will be available. Revenue stated that the online portal would open on 1 January 2021. It is expected that the technical supporting schema will be circulated to the DAC6 subgroup this week and that it will be published via a new DAC6 webpage soon.

➤ Hallmark C

Revenue confirmed that the anti-hybrid guidance will issue soon and that as Hallmark C addresses mismatch outcomes, discussions on Hallmark C will be more fruitful at that point. Revenue noted that there is a definition of tax residence in Chapter 2 of the draft guidance which was informed by the requirements of Hallmark C re being tax resident in a no tax jurisdiction. Practitioners were asked to identify if there is a need for further clarification.

➤ Original Filing Dates – Nordic countries

The Law Society asked whether information will be received earlier than expected by Ireland from some Nordic countries who have not signed up for a deferral of the filing obligations. Revenue stated that they expect the exchanges will take longer as the infrastructure to facilitate the exchange is not functional yet.

➤ DAC6 subgroup

A meeting will be scheduled to discuss the draft guidance and particularly the feedback pertaining to Hallmark C via the DAC6 subgroup.

Item 2: Anti-hybrid rules

➤ Revenue gave an update in relation to the anti-hybrid guidance which is to issue shortly. Many of the issues raised by Practitioners on the draft guidance have been taken on board:

- Additional clarity will be given to the meaning of corresponding amount with CFC inclusion.
- On remittance-based regimes and inclusion, the guidance will clarify that in addition to amounts remitted and taxed, there will be inclusion where an amount is deemed to be remitted (under provisions similar to section 72) and taxed.
- The guidance will include an example in which Revenue see the principles based test in section 835AB(3) being failed.
- Clarification is included on the commencement of the rules, where amounts are accrued and deductible pre 1 January, but paid post 1 January 2020

A number of the issues raised which will not be reflected in the published guidance remain under consideration.

➤ Practitioners were asked to identify the issues which need to be addressed next in the anti-hybrid guidance.

Item 3: A.O.B

- Revenue gave an update on the status of the guidance in respect of transfer pricing. The circulation of the guidance was delayed because of the emergence of other urgent work (related to Covid-19). Feedback in relation to the 'qualifying relevant persons' exclusion in section 835E has been incorporated into the guidance to the greatest extent possible, although there are considerable limits. Revenue has circulated the guidance to internal stakeholders and is awaiting comments. These comments will be considered and the guidance will be progressed further. Revenue intends to circulate a further draft of the guidance in the coming weeks.
- CCAB-I asked whether Revenue has any information in relation to the implementation of the ATAD interest limitation rule. Revenue confirmed that this question is ultimately a matter for Department of Finance to address.
- Upon closing the meeting, Revenue confirmed that this medium (Skype virtual meeting) will most likely be used for the next meeting (given the current circumstances due to Covid-19) which will be scheduled for September 2020.

Attendees of meeting of 6 July 2020:

CCAB – I: Enda Faughnan, Maud Clear, Kevin Doyle, Norah Collender

ITI: David Fennell, Sharon Burke, Anne Gunnell, Emma Arlow, Fiona Carney

Law Society: Caroline Devlin, Andrew Quinn, Derek Henry

Revenue: Jeanette Doonan, Áine Hollingsworth, Eleanor Smiley, Mary Hughes, Adrian Kelly, Audrey Bridgeman