

Minutes

TALC Sub-committee 'BEPS Implementation' Meeting

Date 25 January 2017

Location & Time Conference Room 2, Cross Block 10.00 am

Introduction

Minutes of meeting of 26 October 2016 were approved by all attendees.

Item 1: Multilateral Instrument

- Revenue gave an update on the Multilateral Instrument (MLI).
- An ad hoc group, with c. 100 participating countries, was created in November 2015. The text adopted by the ad hoc group was published on 24 November 2016. The participating countries are currently completing templates indicating likely reservations and choices from options.
- Countries can submit reservations (exclusions) and notifications (identifying a choice from options where these are relevant) in respect of the articles of the MLI. There will be a series of bilateral meetings to ensure that the choices on either side are aligned.
- There will be a high-level MLI signing ceremony in June 2017 which will be an opportunity for countries to take the first step towards bringing the MLI into force.
- If Ireland signs in June 2017 we will ultimately be bound by the MLI *on ratification*. This ratification process will be similar to that undertaken in respect of Double Tax Treaties. Revenue is currently liaising with the Department of Finance and the AG's Office regarding the legal procedures involved.
- In order for a treaty to be a *covered agreement* for MLI purposes, both countries will have to have ratified the MLI

Item 2: Revenue's approach to advance opinions/rulings

- Revenue confirmed late last year that the maximum period of validity of an opinion / confirmation issued is now 5 years (previously being 7 years). The Tax and Duty Manual dealing with LCD opinions / confirmations (TDM 37.00.40) and the RTS Guidelines were updated to reflect the change.
- It is Revenue policy that all opinions / confirmations have a maximum period of validity of 5 years regardless of when they issued or whether they contained a maximum validity period.
- An eBrief will issue shortly with guidance on what taxpayers must do if they wish to continue to rely on an opinion / confirmation from Revenue issued more than 5 years ago and which has not already ceased to have effect.
- If a taxpayer wishes to continue to rely on an opinion / confirmation issued before 1 January 2012, in respect of any transaction, period or part of a period after 1 January 2017, the taxpayer must provide evidence of the opinion / confirmation, being a written communication originating from Revenue, and lodge an application for its renewal or extension with the taxpayer's local tax district by 30 June 2017. The application must comply with the requirements of guidelines on opinions /

confirmations.

- Revenue will acknowledge receipt of the application. If the opinion has not ceased to have effect, it will continue to have effect until Revenue responds in writing to the application. Revenue's response could be either to renew or extend the opinion / confirmation; to renew it subject to amendments; or to withdraw it.
- If Revenue gives written notice of the amendment or withdrawal of an opinion / confirmation, it will apply to transactions and chargeable periods to the extent they are subsequent to the notice.
- In relation to certain classes of opinion requests, the appropriate response might be to deal with the matter through updating guidance.
- Practitioners raised the issue of consistency of opinions. If a taxpayer disagrees with an opinion, it is open to them to take their own position. If Revenue disagrees with that position and issues an assessment, the matter might ultimately be decided through the normal appeals procedure.
- Practitioners expressed concern over the reversal of an opinion / confirmation after the 5-year maximum validity period. Revenue stipulated that this does not happen too often. Opinions issued by Revenue are not binding and it has always been the case that Revenue could review its position, with any such change usually applying prospectively.

Practitioners asked whether there is an absolute obligation to renew opinions / confirmations. Revenue confirmed that as we operate a self-assessment system, there is no obligation to renew opinions / confirmations. For example, the taxpayer might be comfortable taking its own position. In relation to trading opinions for example, the expectation is that trading status should not be in doubt after 5 years.

Attendees of meeting of 25 January :

CCAB – I: Crona Brady, Enda Faughnan, Derek Henry, Kevin Doyle

Revenue: Gerry Howard, Eamonn O'Dea, Jeanette Doonan, Fay Kearney,
Audrey Bridgeman

Law Society: Aidan Fahy, Caroline Devlin, Andrew Quinn

ITI: Peter Reilly, Cora O'Brien, David Fennell, Aidan Lucey, George Thompson,
Sharon Burke