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By email: Nick Houghton
Mike Williams
Peter Steeds

20 November 2013

Dear Nick,

Base Erosion and Profit Shifting

I am writing further to the HMT/HMRC Stakeholder Event regarding BEPS held on 8 November and one issue which is of particular concern to 100 Group members.

Who we are

The 100 Group represents the views of the finance directors of FTSE 100 and several large UK private companies. Our member companies represent almost 90% of the market capitalisation of the FTSE 100, collectively employing over 7% of the UK workforce and in 2012, paid or generated, taxes equivalent to 14% of total UK Government receipts. Our overall aim is to promote the competitiveness of the UK for UK businesses, particularly in the areas of tax, reporting, pensions, regulation, capital markets and corporate governance.

BEPS Action 2 - Neutralise the effect of hybrid mismatch arrangements

This action is aimed at countering unintended tax advantages (double deduction, double non taxation etc) arising from the deliberate use of hybrids in tax planning situations. Whilst we accept that hybrid entities and hybrid instruments can be used for the purpose of achieving "mismatch" tax advantages, there are also many examples of their use in commercial third party situations where any tax advantage is incidental to the purpose of the transaction. Therefore we believe it is very important that any proposed changes in this area do not inadvertently impact these ordinary commercial arrangements. We have set out two areas of particular concern below.

Raising Capital from 3rd Parties

We understand that one potential approach would eliminate a tax deduction for interest payments unless the borrower can confirm that the lender is taxed on the equivalent interest income. In the case of the public debt markets, it is common for issuing companies not to know the beneficial owners of capital raised in the public markets and certainly to have no information on their tax treatment. Investors are often themselves funds/institutional investors who are managing money on behalf of others, and so issuing companies do not know the identity of ultimate owners. Non treaty related exemptions from withholding tax often apply to capital market instruments, meaning that there is no existing need to us to know the beneficial holders.

Introducing a requirement such as that mooted above would either place a compliance burden on business that we simply do not have the information to comply with, or could lead to significant adverse implications on the cost of capital for companies subject to such a rule.

Furthermore in certain industries, notably financially regulated ones (banks, insurance etc), there are already considerable regulatory restrictions which define the type and terms of particular capital instruments. In other cases governments have introduced incentives for issuers as a matter of policy, for example to incentivise investments flows. Introducing further tax complexity, such as a restriction or

compliance burden in relation to financial instruments in these industries could impact and even contradict existing regulatory regimes and increase the cost of capital.

"Joint Ventures" with 3rd parties

Joint ventures take many forms, depending on the industry and particular situation. These range from contractual joint ventures or collaborations, to legal entity partnerships and jointly owned incorporated entities. We understand that there is a proposal that all participants in such joint ventures should be required to treat profits/losses derived from them in the same way for tax purposes.

It is usually the case for one partner in a joint venture not to know how other partner(s) are treating the joint venture for tax purposes; therefore any requirement for symmetrical tax treatment would be impossible for business to comply with. This is particularly the case where the parties to a JV are based in different jurisdictions, which adopt entirely different approaches under their domestic law to the tax treatment of the joint venture. In such situations it should be clear that the hybrid (the joint venture) has not been established for tax planning purposes, and hence it should not be impacted by anti-hybrid legislation of the type sought by the BEPS initiative.

The flexibility required in a typical joint venture (i.e. profit sharing and getting capital out when the JV ends) often leads to the use of entities which are more likely to be subject to different entity classification by different countries and therefore more likely to be hybrid entities.

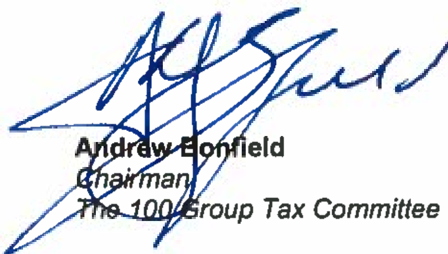
Our Proposal

We understand and fully support the aims of the OECD BEPS agenda, including the objective under Actions 2, to counteract the use of hybrid arrangements and entities solely for the purpose of securing an unintended tax advantage. However as set out above, hybrids arise in entirely commercial arrangements between 3rd parties where any tax advantage is secondary to a commercial purpose e.g. raising capital of sharing commercial risk in a JV.

We would therefore strongly recommend an exemption from anti-hybrid proposals for all third party situations.

We would welcome the opportunity to engage further with HMT and HMRC as we believe it is in all our interests to ensure that any reform under Action 2 should continue to give businesses confidence in the international tax framework and the United Kingdom domestic tax regime.

Yours faithfully



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