Please find attached our examples of the manner in which parties may alter the terms of the Amended Definitions (as defined in our letter submitted on December 9, 2019, a link to which is included below (the "Letter")) when bilaterally adopting contractual terms comparable to the Amended Definitions. As noted in the Letter and during our calls, it is important that guidance address not only the adoption of the Amended Definitions through the Protocol (as defined in the Letter), but also through bilateral agreement.

In addition to the examples we have attached, we are also requesting that the guidance provide that adherence to the Protocol or bilateral adoption of contractual terms comparable to the Amended Definitions not cause a "leg out" of an integrated transaction under Sections 1.1275-6 or 1.988-5, a disposition or termination of one or more legs of a transaction subject to the hedge accounting rules of Section 1.446-4 or a termination of a qualified hedge under Section 1.148-4(h). The proposed Section 1001 guidance as described in the Letter remains our priority, however. (For simplicity, the discussion below focuses on integrated transactions under Section 1.1275-6, but any guidance provided by Treasury and the IRS should apply equally to Sections 1.988-5, 1.1446-4 and 1.148-4(h).)

The reasons such additional guidance would be desirable are the following:

1. The Proposed Regulations (as defined in the Letter) provide that an alteration of the terms of debt or modification of the terms of a derivative "to replace a rate referencing an IBOR with a qualified rate" is not treated as a leg-out, provided that the modified Section 1.1275-6 hedge continues to meet the requirements for such a hedge. This language does not clearly address the modification of a fallback provision, as opposed to the rate itself, although we understand it was intended to be broad.

2. For a taxpayer that hedges IBOR-based debt with an IBOR-linked contract, adhering to the Protocol could potentially cause a leg-out if the ISDA fallback provision of the hedge no longer matches the fallback provision of the debt instrument it hedges in timing and/or amount and the possibility that the fallback methodologies are triggered, i.e., the cessation of the relevant IBOR, is not "remote." By analogy to Proposed Regulations 1.1275-2(m), such a contingency could be viewed as a remote contingency that does not prevent integration.

We request that these additional issues be addressed in the interim guidance relating to the Protocol, rather than solely in the final regulations, because parties adhering to the Protocol (or entering into comparable bilateral amendments) may be presented with these issues by reason of their adherence or bilateral amendment. As a result, concerns relating to these issues may deter parties from adhering to the Protocol or making such bilateral amendments.

Link to the Letter:
https://www.newyorkfed.org/medialibrary/Microsites/arrc/files/2019/ARRC_Tax_Letter_re_ISDA_Protocol.pdf

We appreciate your time and consideration of this request and would be happy to discuss it, or any related issue, at your convenience.

Thank you,

Jared

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