An Roinn Airgeadais
Department of Finance

Additional Tier 1 Capital and Contingent Convertible Bonds

Public Consultation

February 2019

Contents

1. Introduction

Section 845C of the Taxes Consolidation Act 1997(TCA 1997) was introduced in Finance Act 2015 following the transposition of the Capital Requirements Directive and the Capital Requirements Regulation (together known as CRD IV) in 2014. Under the capital structure requirements of CRD IV, the total amount of Pillar 1 capital which an institution needs to issue as a percentage of risk weighted assets (RWA) is set at 8%, of which Tier 1 capital must be at least 6%. The minimum Pillar 1 capital requirements comprise as follows:

- Common Equity Tier 1 (CET1) capital must be at least 4.5% of RWA
- Additional Tier 1 (AT1) may be up to a maximum of 3.5% of RWA
- Tier 2 capital may be up to a maximum of 2% of RWA

To comply with the requirements of the CRD IV, AT1 securities must have a number of features which are designed to aid loss absorbency in the event of a financial crisis. These features include:

- The AT1 securities are perpetual in term with no incentive to redeem
- AT1 securities are ranked below Tier 2 instruments, senior creditors and depositors
- Distributions on the AT1 securities can be paid only out of distributable profits
- Distributions can be cancelled at the bank's discretion and are non-cumulative
- The AT1 securities convert into CET1 capital or are written down in the event that a bank's CET1 ratio falls below a certain threshold
- Purchase is not funded directly or indirectly by the institution

Section 845C was introduced in Finance Act 2015 to provide clarity as to the tax treatment of an AT1 instrument for the purposes of the Tax Acts. This provision refers specifically to AT1 securities and it is proposed that in Finance Bill 2019, in line with similar amendments in some other EU Member States, Ireland will make amendments to take into account other comparable instruments with characteristics similar to AT1 instruments.

The purpose of this consultation is to receive stakeholder input on the consequences of potential changes to be made to Section 845C.

2. Consultation Period

The consultation period will run from 08 February 2019 to 22 March 2019. Any submissions received after this date may not be considered.

How to Respond

The preferred means of response is by email to: taxpolicy@finance.gov.ie

Alternatively, you may respond by post to:

Additional Tier 1 Capital and Contingent Convertible Bonds – Public Consultation,
Tax Division,
Department of Finance,
Government Buildings,
Upper Merrion Street,
Dublin 2, D02 R583.

Please include contact details if you are responding by post.

When responding, please indicate whether you are contributing to the consultation process as a professional adviser, representative body, business representative or member of the public.

Freedom of Information

Responses to this consultation are subject to the provisions of the Freedom of Information Acts. Parties should also note that responses to the consultation may be published on the website of the Department of Finance.

Meetings with key stakeholders

The Department of Finance and Revenue may also invite key stakeholders to meet with them, including representative bodies, tax professionals and other interested groups or individuals.

After the Consultation

Tax policy issues from this public consultation will form part of the Minister for Finance’s considerations in relation to the applicable legislation into national law.

3. The Consultation Questions

In responding to this consultation you are invited to:

- Give your views on the specific questions set out below. You don't have to answer every question – you can choose to answer any or all of the questions.
- Provide details of any alternative approaches or options you feel might be beneficial in dealing with the issues being addressed.
- Provide details of relevant issues not covered in this paper.
- Where appropriate, provide some analysis of the Exchequer cost/yield of your preferred option.
- Comment generally on the direction you would like to see tax policy in this area develop.

Your views are important as they may help influence the taxation treatment and policy to be applied in the future.

4. Questions on Additional Tier 1 Capital and Contingent Convertible Bonds

S.845C – Additional Tier 1 Capital (AT1)

It has come to the Department's attention that a number of EU Member States are currently amending their tax treatment of issuances under AT1 instruments to take into account other comparable instruments with similar characteristics to AT1 instruments. It is Ireland's intention to amend Section 845C as part of Finance Act 2019.

1. If the treatment of AT1 capital instruments within 845C were to be extended to other comparable instruments, are there other instruments in operation within the Irish system that will be affected by this treatment?

2. What are the potential consequences of extending the current tax treatment to all instruments with similar characteristics to AT1 instruments within the Irish system?

Contingent Convertible Bonds

The tax treatment of capital upon conversion of contingent convertible bonds, including AT1 instruments, is determined under general principles. It is now considered appropriate to consider whether it is desirable to provide specifically for the tax treatment of such capital on conversion.

3. What are the key considerations to be taken into account when considering the treatment of such capital on conversion?

Anti-Tax Avoidance Directive

Respondents are requested to note that potential changes to tax treatment of contingent convertible bonds, including AT1 instruments, will also take account of the forthcoming introduction of the Anti-Tax Avoidance Directive anti-hybrid rules.