IN BRIEF

- On 21 June 2007, HM Treasury and HM Revenue and Customs published a discussion document entitled ***Taxation of the foreign profits of companies***. The move followed a commitment made in the 2007 Budget to consult on the issue. The most likely date for implementation is the Finance Bill 2009.

  The key proposals are, first, to replace the UK's existing regime of taxing foreign dividends and giving credit for foreign tax paid. There will instead be a participation exemption for foreign dividends received by large or medium-sized companies from subsidiaries in which they hold at least a 10% shareholding. The credit system for small companies will also be simplified.

  Second, to replace the UK's existing controlled foreign companies (CFC) regime with a new income-based controlled companies (CC) regime. Small companies will be exempt from the CC rules unless their consolidated group profits exceed a material amount.

  Third, to make no wide-ranging changes to the interest relief regime but to introduce some targeted changes to counter avoidance.

  And fourth, to replace the Treasury consent rules with a real-time information reporting requirement.

- On 17 July 2007 a working group led by Sir David Walker published a ***Disclosure and transparency in private equity*** consultation document. The BVCA and a group of major private equity firms had requested a review of the adequacy of disclosure and transparency in the private equity industry following a significant amount of negative comment and suspicion about the industry. The working group was asked to develop a set of guidelines for private equity firms to be applied on a comply or explain basis. The consultation document sets out principles underlying Sir David's intended approach to setting guidelines later in 2007 in the light of responses received. It recommends enhanced reporting by portfolio companies, fuller communication by major private equity firms and more substantive reporting, interpretation and analysis by the whole industry.

- The Financial Reporting Council (FRC), the US Securities and Exchange Commission (SEC) and the UK Financial Services Authority (FSA) have signed a protocol for implementing the Work Plan between the SEC and the Committee of European Securities Regulators as it relates to sharing information on the application of **International Financial Reporting Standards (IFRS)** by issuers listed in the UK and the US.

INTRODUCTION

By Peter Matza

Policy and Technical Officer

The recent volatility in credit markets serves as a timely reminder to treasurers to take stock of their liquidity planning. In general, treasurers at all levels of credit would seem to have taken advantage of bank loan markets over the past couple of years to secure longer-dated facilities at historically low margins. The bond markets too have been generous in their support.

Corporate profits remain healthy – albeit some sectors show some difficulties – and balance sheets have (except in the leverage buy-out arena) been repaired from the heavy leverage of 2001-2003. The ratings agencies are not reporting structural change in the continuing low level of corporate defaults.

Despite sensationalist headlines, most commentators are suggesting that the summer lull will allow the markets to take a breather rather than presaging systematic failure. Treasurers might think it judicious to manage and inform the views of their corporate colleagues, their investors and their stakeholders.

How to get the best out of money market funds

Recent press reports about the capital loss in some money market funds have highlighted the general issues a treasurer should be looking out for when placing funds under management.

Over the next couple of years corporate and financial institution investment in money market funds is likely to grow substantially in the EU as a result of the Basel II capital adequacy rules and the Markets in Financial Instruments Directive (MiFID). In addition, it is expected that substantive changes to the UK regime for bank liquidity will be announced this autumn by the FSA for implementation on 1 November.

These and similar changes regarding insurance regulation mean that in future AAAm funds will qualify for a 20% or less risk weighting for regulatory capital purposes. This is likely to increase the size of funds, which makes them potentially more interesting for corporate investors as an investment of a given size will be a smaller proportion of the fund.

First, it is important to appreciate that the generic term 'money market' can have widely different meanings – both in legal and practical terms – in different markets.

In the US, for example, it can mean regulated funds where the entire investment portfolio must have a weighted average maturity of 90 days or less. In the UK, it has come to mean a maximum maturity of up to 12 months, but in continental Europe it can be expanded to include bond funds with up to five years in maturity (and can also be known as 'enhanced yield').

Second, to address the media comment, there is a risk/reward trade-off which will be reflected in the funds' credit rating (or lack of rating). AAAm (or similar) funds can be expected to invest to preserve capital and earn a return around Libid. Further down the credit scale, enhanced yield funds may elongate the tenor and/or stretch the risk in their portfolio but with a commensurate credit exposure for the investor. The intention is to offer investors a diversification of investment at any given level of credit.

Third, there are a number of process issues – liquidity of the fund, monitoring of the investment policy (especially adherence to ratings criteria), fee structure, regulatory environment, accounting and documentation support, and so on – which need careful consideration before any investment.

Fourth, as a generic product, they offer the treasurer holding cash an opportunity to satisfy the ancillary business requirements of any lenders not otherwise benefiting from their relationship. By definition, funds can be made subject to clear benchmarking opportunities.

Last, where funds are being managed on a short-term basis, the treasurer may also consider it useful to have outsourced a relatively mechanistic function, freeing up internal resource for more value-added treasury activity. By contrast, where funds can be invested for a longer term, treasurers can acknowledge their lack of expertise as investment managers but use their skills in understanding risk to place cash in a suitable fund. ■

Policy and Technical explained

The Policy and Technical (P&T) team at the ACT is overseen by the P&T Committee, consisting of the ACT team, corporate treasurers and other finance professionals who provide their time and expertise to the ACT on a *pro bono* basis. While there is a formal aspect to each meeting involving reviewing previous minutes and similar administrative matters, the heart of each meeting is discussion and debate about topical issues, likely responses to consultations and policy issues for the ACT. This can be best illustrated with examples from the July meeting.

■ The introduction of the Single Euro Payments Area (SEPA) and the payment services directive will have implications for businesses operating across Europe. While these changes will have most impact on cross-border (euro) transactions, the UK has developed its own significant changes to payments, 'UK Faster Payments'.

Although the start has been delayed until spring 2008, the committee discussed how to make treasurers aware of how the proposed changes will impact cash management. In particular, the advent of everyday value dates could have a substantial impact on corporates in a wide range of business sectors.

The P&T team is currently working on a briefing note for treasurers which will be made available to ACT members when UK Faster Payments arrangements are more advanced.

■ The P&T team is constantly reviewing the landscape of public consultations and discussion papers issued by governments, regulatory and standard-setting bodies. When items are considered relevant for an ACT response, an executive summary is prepared for the P&T committee and discussed at the meeting. Outcomes vary from deciding the subject is not as relevant as initially thought to enlisting the support of a committee member with specialised experience in the subject. In July this was the outcome for both topics under consideration – namely the HMRC consultation on its approach to transfer pricing for large businesses, and the HMRC/HMT discussion document (to be followed by a consultation!) on the taxation of foreign profits (see In Brief on the opposite page).

■ Likewise, the P&T team will prepare a summary for the September meeting of a response to the Walker Review on private equity. This follows on from previous P&T submissions to the FSA, Treasury Select Committee and the *Financial Times* (with respect to 'covenant lite' loans).

The ability of the P&T team to influence events is greatly assisted by being able to draw on an unmatched breadth of experience of the committee members. As we have said before, new members are always welcome! ■

Don't forget to do your duty, says FSA

The Financial Services Authority (FSA) wrote in early July to the chief financial officers and finance directors of smaller-cap listed companies in its capacity as the UK listing authority to remind them of their obligations under the listing rules and disclosure and transparency rules.

Companies subject to the listing rules were reminded they have to establish and maintain adequate procedures, systems and controls to comply with their obligations – in particular, the obligation to disclose information to the market in a timely and accurate manner.

The FSA also says a company's identification and escalation processes should not be undermined by the need to disclose price-sensitive information outside the company's normal reporting cycle.

Companies' reporting systems should also be able to cope with the accelerated reporting timetables brought about by the implementation of the transparency directive in the UK.

Finally, companies were reminded of their general obligations under the listing rules and disclosure and transparency rules to maintain control over access to inside information and their disclosure requirements in respect of, or even restrictions on, dealings undertaken by persons discharging managerial responsibility. ■

Revised LMA loan documentation guide

The ACT guide to Loan Market Association (LMA) loan documentations has been revised and all previous updates consolidated into a single document available on the ACT website.

The guide explains the nature of the LMA loan agreement for investment-grade borrowers, the commercial implications for borrowers, and the areas where further negotiation by borrowers is advisable, along with the arguments both sides may consider.

Much of the advice is equally applicable to non-LMA loan agreements.

The guide is produced by the ACT with assistance and sponsorship from the law firm Slaughter and May. Go to: **www.treasurers.org/technical/lmaguide.cfm** ■

IN BRIEF

▸ HMRC has published a consultation document on a proposed new approach to the administration of **transfer pricing enquiries for large business**. The proposals include ways in which HMRC can better target its transfer pricing enquiries and focus on the right issues. Speeding up the resolution of transfer pricing enquiries, with an 18-month completion timetable as the norm, is also proposed in the document, as is devoting more HMRC resources to transfer pricing, with more specialist input. HMRC sees its proposals as taking forward the key Varney Review recommendations of giving increased and earlier certainty to business, moving closer to real-time working and speedier resolution of issues.

▸ On 12 June 2007 the European Council formally adopted the directive on the **exercise of shareholders' rights**, which is now officially part of EU law. The text of the directive provides for, among other things: 21 days' notice for a general meeting (which can be reduced to 14 days in certain circumstances); publication of the general meeting notice on the company's website at least 21 days before it is to be held; the right to participate in a general meeting not being subject to a requirement to block shares by deposit and the introduction of a record date which cannot be more than 30 days before the general meeting; the abolition of obstacles to electronic participation in the general meeting; the right to put items on the agenda of the general meeting; the abolition of any rules restricting the eligibility of people to act as proxy holders; and the disclosure of the voting results of general meetings on the company's website.

▸ The High Court has provided some extremely useful guidance in relation to **oral contracts** in the decision of Bear Stearns Bank plc v Forum Global Equity Ltd [2007] EWHC 1576 (Comm). Where it is the norm to reach agreement orally after telephone negotiations, this decision provides welcome assurance that once material terms are agreed, such agreements are not easily avoided by claims of uncertainty or incompleteness, with the courts looking for substance over form in assessing whether a valid bargain has been struck. That begs the question of what material terms will be sufficient. It is perhaps surprising that agreement on a few very basic terms can be sufficient to create a legally binding trade – even absent standard terms published by industry associations such as the UK Loan Market Association.