

6 April 2009

**BY EMAIL**

Business International  
Financial Transfer Pricing  
100 Parliament Street  
London SW1A 2BQ

**For the attention of Andy Martyn**

Dear Sirs

**UK treaty clearance process - relief from withholding tax on corporate interest**

The LMA and the ACT jointly wish to respond to your letter of 26 February 2009 inviting comments on the arrangements for non-resident lenders claiming treaty relief from interest withholding.

The LMA and the ACT are grateful that this area is being reviewed. We believe you are aware of the proposal submitted by the ACT and the LMA to the Financial Services Secretary, Lord Myners, and copied to Win Bischoff and Dave Hartnett. We attach a copy for your ease of reference.

We should start by saying that our proposal, and this letter, relate to syndicated loans granted on standard commercial terms by lenders acting at arm's length.

*1. What are your views and recent experiences of the arrangements for applying to HMRC for treaty relief on loans from non-resident lenders to UK companies?*

The LMA and ACT believe that the current treaty relief regime, which dates from the 1970s, is now causing significant administration and cashflow costs for UK companies and their foreign lenders. Delays of six months or more in obtaining treaty clearance are common (with the resultant cashflow cost), even where the foreign authority certifies a treaty claim promptly. These delays and costs are significantly worse in the UK than in our major competitors, and are therefore depriving UK plc of liquidity at a time when, as you will appreciate, it is at a premium.

*2. Please comment on any specific suggestions that you may wish to make on how these treaty relief arrangements might be improved to give both business and HMRC an efficient process and early certainty*

The current framework for treaty relief is almost forty years old. As set out more fully in our proposal, the LMA and the ACT believe that the expansion in the credit markets over that time means that the concept of each lender making a separate treaty claim for each loan it grants is no longer viable. In the context of arm's length syndicated loans, we believe it is generally the case that questions of treaty eligibility relate to the status of the lender, and not to the status of the borrower or the terms of a particular loan. Accordingly, we propose that lenders be able to apply for a general clearance "passport" covering all the arm's length syndicated loans they may enter into. We appreciate that there are a number of ways such a scheme could be implemented; our proposal sets out one approach which we believe preserves HMRC's ability to scrutinise a lender's status in advance and impose a withholding (prospectively or retrospectively) where a lender is not in fact treaty-eligible.

*3. Treaty relief is sometimes granted for a fixed period rather than by reference to the period of the loan agreement. Does this approach result in a significant administrative burden where the length of the loan is greater than the period for which treaty relief has been granted?*

Our understanding is that treaty relief is generally granted for a fixed period of five years; this is shorter than the term of many syndicated loans. The fixed period does in our experience give rise to some administrative difficulty, and can result in a repeat of the delay and cashflow cost experienced when treaty relief is initially granted.

*4. What are the reasons that the PTRS has had only limited take up?*

Agent banks and borrowers have been concerned at the perceived administrative complexity of the scheme, and the possibility for potential litigation from borrowers/lenders if the agent or borrower operating the scheme makes a mistake.

*5. Please comment on any ways you believe the PTRS may be made more effective*

The feedback from the LMA and the ACT's members is that agent banks and borrowers will remain unwilling to take on the role of syndicate manager under the PTRS. As this role is inherent to the PTRS, we believe that a new approach is required.

*6. Please also let us have any comments you may wish to make on how the withholding tax, thin capitalisation and compensating adjustment rules interact in the circumstances described above.*

Thin capitalisation adjustments are unusual in the context of arm's length syndicated loans, and lenders are not generally in a position to agree to make compensating adjustments. Accordingly, whilst we believe it is helpful that HMRC is consulting on these issues, they are outside the scope of the LMA and ACT's joint approach, as outlined in this letter and our proposal.

Thank you again for the opportunity to comment.

Yours faithfully

**Loan Market Association/Association of Corporate Treasurers**