Bond issuers beware

All eurobond and medium term note (MTN) issuers, whether domiciled in the EU or not, will be affected by the EU Savings Directive unless they issue before 1 March 2001. After this date, the markets may dry up for a period unless market practitioners can develop ways of protecting issuers and investors from the impact of the Directive in the short time available.

Although the EU has agreed to adopt the UK government's suggested approach of providing information to tax authorities, instead of a withholding tax, some countries will levy withholding tax. Luxembourg, Austria and Belgium are likely to be among them, and possibly Greece and Portugal. Even the information approach will have costs associated with it.

First, the Directive applies only to retail investors, so there will need to be a way of identifying these. Second, it applies to 'paying agents', but the definition is broader than the usual one for bonds and could include a financial institution that acts as collecting agent for an investor and which pays the interest over to him.

Since the Directive applies to payments made by a paying agent in one EU country to an investor in another EU country, the issuer's location is immaterial. It may be possible to locate the paying agent outside the EU, in which case the Directive will not apply. Luxembourg-based paying agents will, of course, have to be avoided.

The good news is that existing bonds are 'grandfathered', as are bonds issued before 1 March 2001, or those for which the offering circular is issued before then. Issuers not able to meet that date will need to ensure they and/or their paying agents have the systems in place to comply with the requirements of the Directive when it eventually comes into force.

They will also need to protect themselves from any adverse consequences, such as a requirement to gross up or redeem bonds early, if withholding tax becomes payable. This requires a review and redraft of the standard documentation. MTNs are a particular problem here as it is difficult to amend the master agreements in the time available.

The most annoying aspect of this is that the Directive may not come into force for many years (January 2003 at the earliest), but the early cut-off date for grandfathering means that its impact on the bond and MTN markets is immediate.

The International Primary Markets Association has organised a group that includes City legal firms to discuss how documentation will need to be amended. In addition, treasurers will need to assure themselves that the costs for paying agents of complying with the Directive will not be passed on to issuers. ■

Tax matters

Double taxation relief (DTR)

The Inland Revenue has initiated discussions with the corporate sector to discuss DTR implementation and other issues arising out of the last Finance Bill. Presumably, this is an acknowledgement that the changes have caused considerable difficulties for firms despite the U-turn on aspects of the original proposals. The Revenue is inviting comments. Those concerned about the new rules should keep an eye on the Revenue's website www.inlandrevenue.gov.uk.

Consultation on foreign exchange, financial instruments and loan relationships

The Technical Committee has sent a letter to the Revenue in response to this consultation. The main point made is that it is important to eliminate the uncertainties in the current legislation that are preventing companies undertaking transactions which treasurers might advocate for purely commercial reasons. However, some of the proposals are far reaching and we believe that further detailed consultation is required. One issue is the question of adopting a simple 'follow the accounts' rule. Since accounting standards (and company reported figures) are currently experiencing dramatic change this seems a singularly inappropriate time to make such a change. ■

Regulation of the financial markets

There was a flurry of activity just before Christmas, and it is now becoming much clearer how the new Financial Services and Markets Act will affect treasurers when it comes into force, now expected no earlier than July 2001.

As you will have read in previous Hotlines, the successor to the London Code for the wholesale deposit and FX markets was put out for consultation by the Bank of England in December. Although the formal date for responses has passed, it is still worth looking through the draft NIPs Code as it is unlikely it will be finalised until later this year.

In a related development, the Association has written to HM Treasury in connection with its consultations on the scope of regulation and on financial promotion. There are some measures included (or exemptions excluded) that could cause considerable difficulties for treasurers. We believe these are not intended, but avoiding them could cause the drafters some problems. Further details are given in the technical update on www.treasurers.org. ■

Hotline is prepared by Caroline Bradley, the Association's Technical Officer. For any comments or new items, please contact her at cbradley@treasurers.co.uk. Additional technical updates are available on the website: www.treasurers.org.