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BY EMAIL

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Dear Mr Jones

Taxation impacts arising from the withdrawal of LIBOR

The Loan Market Association ("**LMA**") welcomes the opportunity to respond to the HMRC consultation document "*Taxation impacts arising from the withdrawal of LIBOR*" published on 19 March 2020 (the "**Consultation Document**") and the accompanying draft guidance "*Draft guidance on the taxation impacts arising from the withdrawal of LIBOR and other benchmark rate reform*" (the "**Guidance**").

The LMA is the trade body for the syndicated loan markets in Europe, the Middle East and Africa ("**EMEA**") and was founded in December 1996 by banks operating in these markets. Its aim is to encourage liquidity in both the primary and secondary loan markets by promoting efficiency and transparency, as well as by developing standards of documentation and codes of market practice, which are widely used and adopted. Membership of the LMA currently stands at 750 organisations across over 65 jurisdictions and consists of commercial and investment banks, institutional and other non-bank investors, law firms, rating agencies, borrowers and service providers. The LMA is recognised across the market and has expanded its activities to include all aspects of the primary and secondary syndicated loan markets. Its overall mission is to act as the authoritative voice of the EMEA loan market vis à vis lenders, borrowers, regulators and other interested parties.

Of particular importance in the context of this response to the Consultation Document are the LMA's aims of promoting the syndicated loan as one of the key debt products available to borrowers and of promoting liquidity in the market.

Our member institutions are likely to have other thoughts on the Consultation Document and Guidance and we have encouraged them to submit their own feedback on these documents.

Introduction

The syndicated loan market is heavily reliant on LIBOR as the benchmark rate in the calculation of interest in respect of such loans. The LMA views providing certainty to credit market participants and resolving unexpected tax outcomes as crucial to maintaining stability and liquidity in the market. The LMA, therefore, strongly supports HMRC's effort to identify issues arising from the withdrawal of LIBOR and the publication of guidance on areas of uncertain tax treatment in respect of the replacement of LIBOR (and other benchmark rates that are being withdrawn) with different benchmark rates. The LMA believes that removing uncertainty and introducing legislation to deal with unexpected effects of LIBOR withdrawal will mitigate any impact on liquidity in the credit markets and so avoid any consequential impact for UK businesses in today's challenging economic climate.

Consultation questions

The following paragraphs respond to the specific questions raised in the Consultation Document:

Question 1 – Are there any additional issues that should be included in the draft guidance, or points that could be expressed more clearly?

We have the following comment on the Guidance:

Premia and Withholding

It is possible (though perhaps unlikely) that when moving to another benchmark a lender might have to pay a premium to a borrower. As HMRC acknowledges, such a payment is not "interest" for UK tax purposes. At the same time (as it is a somewhat unusual payment) there is a concern around potential UK withholding as an "annual payment", which HMRC does not comment on in the Guidance. We are of the view that such a payment should not be considered an annual payment as it lacks the quality of recurrence. However, given the uncertainty around the exact limits of what can qualify as an annual payment, we would request HMRC consider explicitly stating that such a payment to a borrower would not be an annual payment, so that lenders can have greater certainty on the point. For completeness, we note that almost all lenders will in practice fall under either a United Kingdom domestic exemption from such withholding tax or benefit from treaty relief, so this is in essence a procedural point, albeit one that would be practically awkward to resolve.

Changes to terms

HMRC states that amending the terms of an instrument for the purpose of responding to LIBOR withdrawal should normally be treated as a variation by HMRC. It is possible that other significant non-LIBOR changes (e.g. provisions necessary under regulatory requirements or provisions required by lender compliance teams) will be required when amending facility agreements (e.g. due to loss of grandfathering). We consider that it is within the spirit of HMRC's statements that such necessary changes should not prevent the amendment from being seen as a variation. We would be grateful if HMRC could include a statement to this effect if it agrees with our position.

The draft guidance also refers to "material changes" on a related point for company distributions. Can HMRC clarify what will be considered as "material change", perhaps with some examples.

Question 2 – How common is it for companies to rely on each of the LIBOR fallback provisions in tax legislation?

We have no view on this point.

Question 3 – Are there any additional places where tax legislation depends on LIBOR that need updating in light of its expected withdrawal at the end of 2021?

We have no view on this point.

Question 4 – What do you see are the advantages and disadvantages of each option for replacing references to LIBOR in tax legislation?

We have no view on this point.

Question 5 – Comparing the three options, what is your preferred option and why?

We have no view on this point.

Question 6 – Are there any other options that should be considered?

We have no view on this point.

Question 7 – Do you think changing statutory references will have any impact on your administrative burdens and costs? If so, please provide details including any one-off and on-going costs.

We have no view on this point.

Question 8 – Do you think changing statutory references will have any additional impact on small and micro businesses, not already covered? If so, please provide details, including any one-off and on-going costs.

We have no view on this point.

Question 9 – In the context of this issue:

a) ***Are the amendments to the hedge accounting requirements in UK GAAP and IAS sufficient to ensure that hedge accounting can continue for instruments referencing LIBOR in the pre-transition period?***

We have no view on this point.

b) ***If the amendments are not sufficient, do the Disregard Regulations provide a viable solution to avoiding tax volatility?***

We have no view on this point.

Question 10 – Do any additional significant tax issues arise pre-transition?

We have no view on this point.

Question 11 – In the context of transactions undertaken to restructure financial instruments for the withdrawal of LIBOR:

a) ***Are there situations where you expect significant gains or losses to be recognised in profit and loss accounts as a result of restructuring financial instruments for the withdrawal of LIBOR?***

We have no view on this point.

b) ***If so, do you expect these amounts to be brought into account for tax? If not, please explain the reason for this.***

We have no view on this point.

c) ***If you do expect amounts to be recognised in the accounts, and brought into account for tax, do you expect this to cause any significant issues?***

We have no view on this point.

Question 12 – Are there any other significant tax issues that could arise as a result of the restructuring of financial instruments for the withdrawal of LIBOR?

We refer you to our comments on the Guidance, which identifies certain issues relevant to our members.

Question 13 – Are there any additional significant tax issues which could arise as a result of the withdrawal of LIBOR?

We have no view on this point.

We would be pleased to discuss any aspect of the above with you in more detail. If we can be of any further assistance please do not hesitate to contact me by email at clare.dawson@lma.eu.com or on 020 7006 6007).

Yours sincerely

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The Loan Market Association