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Dear Mr Willis

Direct Recovery of Debts

We welcome the opportunity to respond to the HMRC Consultation Document on the Direct Recovery of Debts ("**DRD**") issued on 6 May 2014.

The LMA is the trade body for the European syndicated loan market. 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 over 550 across EMEA and consists of banks, non-bank investors, law firms, rating agencies and service providers.

Whilst much of the focus of the Consultation Document is on recovering debts from individuals, there seems a clear intention to apply DRD to companies as well, and this letter is written on that basis (but if we are incorrect it would be helpful if you could clarify the position).

We are concerned the proposal undermines insolvency law by effectively giving HMRC a preference over other creditors (and essentially reinstituting Crown Preference). Indeed the proposals go further than Crown Preference, as they provide HMRC with a cashflow advantage over even secured creditors with a fixed charge or mortgage, and create the potential for HMRC to disrupt consensual restructurings and enforcement procedures (intentionally or unintentionally). This may make lenders reluctant to refinance or restructure borrowers that are in financial difficulty. Lenders may even become reluctant to lend to solvent borrowers without detailed comfort being given as to a borrower's tax affairs. Making

it more difficult for businesses to borrow seems to us quite inconsistent with Government policy.

Similarly, the proposal potentially undermines lenders' (and other parties') rights of set-off. The assessment that a customer's account is £5,000 in credit is presumably going to be made on a gross, rather than net basis. Hence lenders' and counterparties' credit assessments, which have historically taken account of set-off, may no longer be able to do so going forward – again making it harder for businesses to access credit.

We therefore see the proposals as having a potentially detrimental effect on UK businesses.

We also have more general concerns relating to the principle and practicality of the proposed rules. We are concerned by the lack of any judicial or other independent oversight of the proposed new powers and the ramifications this may have for businesses (although these ramifications are clearly not limited to business). Whilst in principle we understand the case for such powers in relation to taxpayers who are deliberately choosing not to pay, we believe that in practice it would not be possible to avoid situations where innocent taxpayers are impacted (as administrative mistakes are inevitable).

We would add that we do not see the analogy the Consultation Document makes with child maintenance payments as particularly helpful. Child maintenance payments are an unusual example of a case where HMRC acts, in essence, as an intermediary between parents. That is some distance from the DRD proposal. Furthermore, the Consultation Document proposals have the potential to deleteriously affect third parties (lenders and other creditors to a company): child maintenance arrangements generally do not.

Given these difficulties, and those which others have identified, in our view there should be a consultation on the underlying policy rationale for DRD before any consultation on the details of implementation. If, however, you do proceed to implement DRD, we regard it as imperative that DRD does not prejudice the rights of lenders and other third parties.

Yours faithfully

Clare Dawson

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