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07 April 2016

By email: taxtreaties@oecd.org

Dear Sirs

Treaty Residence of Pension Funds

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 600 across EMEA and consists of banks, non-bank investors, law firms, rating agencies and service providers.

Increasingly, pension funds are becoming significant investors in the loan market. It is therefore in the interest of pension fund lenders as well as the loan market as a whole that pension funds are given access to the widest possible double taxation treaties.

We refer to the public discussion draft published on 29 February 2016 regarding the proposed changes to the OECD Model Tax Convention Concerning the Treaty Residence of Pension Funds (the "**OECD Model Tax Convention**") and we welcome the opportunity to submit comments to this discussion draft.

With regard to the proposed changes to paragraph 1 of Article 3 of the OECD Model Tax Convention, we have the following observations on the proposed definition of "recognised pension fund":

- whilst the phrase "*an entity or arrangement established in that State that is treated as a separate person under the taxation laws of that State*" may intend to cover pension benefits provided through trust arrangements, the requirement that such vehicles are recognised as separate persons under domestic taxation laws may be problematic. In the UK and other jurisdictions, pension funds are often established through trusts which could file separate tax returns, but they are not independent legal persons in general. It is also highly arguable if they are legally recognised as separate persons for tax purposes. Furthermore, in the case of the UK, activities carried out by pension funds often fall outside the scope of taxation alltogether, as income from investment returns and gains received on realising investments of the assets held within registered pension schemes are generally exempt from taxation. For clarity, we therefore suggest amending this provision to refer to an entity or arrangement that is "*assessed for tax separately*" under the taxation laws of that State;

- with regard to the proposed wording in paragraph 1 j)(i) of Article 3 referring to an entity or arrangement "*that is constituted and operated exclusively to administer or provide retirement or similar benefits*", we note that a large number of pension funds provide a range of non-similar ancillary benefits such as death benefits, ill-health related benefits, age-related benefits and dependants' benefits. We are of the view that the proposed construction is unnecessarily restrictive, and in its current formulation there is a risk that a large number of pension funds could be excluded. This could lead to a significant level of uncertainty. We also note that the Institutions for Occupational Retirement Provision (IORP) directive uses the phrase "*retirement-benefit related operations and activities arising therefrom*". Accordingly, the formulation we would suggest for paragraph 1 j)(i) of Article 3 is:

  (i) "that is constituted and operated exclusively to administer or provide retirement benefits or ancillary benefits relating thereto (including (without limitation) death benefits, ill-health related benefits, age-related benefits and dependants' benefits) to individuals and that is regulated as such by that State or one of its political subdivisions or local authorities; or".

Please do not hesitate to contact us if you would like further information on any of the above.

Yours faithfully

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