

Mark Lafone
HM Revenue & Customs
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6 May 2016

Email: Mark.Lafone@hmrc.gsi.gov.uk

Dear Mr Lafone

Qualifying Private Placement Consultation: Working Group

1. Following the introduction of the new exemption from UK withholding tax for interest paid on "qualifying private placements" (the "**QPP Exemption**"), the LMA wishes to thank you and your colleagues at both HMRC and HMT for your work in implementing the QPP Exemption.
2. We are writing to share with you the private placement template documentation which we have recently published and to ask for clarification by way of guidance of a few points of uncertainty which have arisen for our members since the introduction of the new exemption this year.
3. References to the "Regulations" herein are references to the qualifying private placement regulations which came into force on 1 January 2016.

Form of private placement documentation

4. For your reference, we enclose copies of the LMA's template private placement documentation (i.e. the template PEPP Facility Agreement and PEPP Subscription Agreement which are intended to be used for loan transactions and note transactions respectively). We have worked with Clifford Chance to reflect the QPP Exemption in the documentation.
5. In particular, you will note that we have devised a standard form of creditor certificate, which we expect to be adopted as market standard. A lender wishing to take advantage of the QPP Exemption simply indicates their intention to do so, and signs a standalone creditor certificate in the form scheduled to the document.

Impact on the market and points of clarification

6. As noted previously, the LMA welcomes the QPP Exemption as an important step in the process of expanding the UK private placement market and we expect most non-UK investors in privately placed debt to start using the QPP Exemption, and providing creditor certificates, as a matter of course. We have seen significant interest amongst market participants in the QPP Exemption.
7. Further, in light of your recent confirmations (by way of email correspondence with Dan Neidle of Clifford Chance LLP - copy enclosed) that the QPP Exemption can, where the necessary conditions are met, be applied in the context of a syndicated loan, we consider that the introduction of the QPP Exemption is a very significant development for the syndicated loan market.
8. However, in order to further encourage the market to adopt the new exemption, we consider that it would be very helpful for certain points of detail to be discussed in the HMRC guidance on the Regulations to be included in the HMRC Savings and Investment Manual (the "**Guidance**"), when it is published. These are points where certain market participants and law firms have expressed uncertainties about the application or scope of the exemption leading to a reluctance to rely on the exemption in certain contexts. We appreciate and acknowledge that the LMA has received informal confirmation of HMRC's position on points (a) and (b) through the enclosed email correspondence but in the interests of a smooth adoption of the QPP Exemption by the market, we would propose that inclusion of the discussion or confirmations in the Guidance would be useful.

(a) Syndicated loans

As noted above, we understand that HMRC's position is that the QPP Exemption can, where the necessary conditions are met, be applied in the context of a syndicated loan. As we anticipate that our members will only want to use the exemption in a manner which you are comfortable with, we would be most grateful if the application of the exemption to such loans (which are not "private placements" in the usual commercial meaning of the term) is confirmed in the Guidance.

(b) Interpretation of "*each creditor*"

We understand that the references to "each creditor" in regulation 3 of the Regulations are intended to ensure that the exemption applies on an investor-by-investor or lender-by-lender basis and that it is not necessary for a

borrower to hold a creditor certificate for each creditor in the private placement for the QPP Exemption to apply. The working group received confirmation of this by way of Andrew Stewardson's email to the working group dated 18 December 2015 (enclosed). We consider that it would be of assistance to the market if this statement were to be reflected in the Guidance.

(c) Interpretation of "comprised in a single placement"

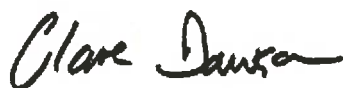
Under Regulation 4(3) of the Regulations, at the time the relevant security was entered into, it must have had a minimum value of £10 million or, where the relevant security had a lower value at the time it was entered into but it was comprised in a single placement with other relevant securities by the same debtor, the placement must have had a minimum value of £10 million.

A concern relating to this regulation has been raised by our members and relates to transfers of part of a placement where the value of the participation transferred is less than £10 million. Regulation 4(3)(a) requires the minimum value to be assessed "at the time the relevant security is entered into". A transfer could be argued to give rise to the entering into of a new security or loan relationship (particularly where it is done by novation which is common in the UK market on the 'transfer' of (part of) a loan) raising the question of whether the minimum value requirement must therefore be met by reference to the amount transferred alone.

In our view, the correct approach would be to look at what "comprised in a single placement" means from a commercial perspective and that although a transfer by novation may in the strict legal sense suggest that a new security or loan is being created, the transferred piece should still remain within the original "placement" such that the test in Regulation 4(3) does not need to be reapplied in respect of the part of the loan or note being transferred. So, for example, if a £50 million financing is effected by issuing £5 million of notes to each of ten investors then the original financing clearly falls within the exemption, and this will remain the case if one investor subsequently transfers their £5 million notes to a new investor – the "placement" in question was the original £50 million financing and not the transfer. We should be grateful if HMRC would confirm in the Guidance its position on this point.

9. We thank you in advance for your consideration of the above. If it would be helpful to discuss further any of the above, we would be happy to do so.

Yours sincerely

A handwritten signature in black ink, reading "Clare Dawson". The signature is written in a cursive, flowing style.

Clare Dawson
Chief Executive
Loan Market Association