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LMA Response to HMRC Consultation: Simplifying Treaty Relief from Withholding Tax on Interest Paid Overseas

The Loan Market Association (**LMA**)[1] welcomes the opportunity to respond to the HMRC Consultation: Simplifying Treaty Relief from Withholding Tax on Interest Paid Overseas (the "**Consultation**").

Responses to the Consultation

We have had sight of the responses to the Consultation submitted by the Association of Corporate Treasurers (**ACT**) and UK Finance.

We acknowledge that the ACT response sets out important and valuable points raised by the borrower community. We note that it also highlights a number of matters of relevance to market-standard loan documentation and established market practice, including the potential implications of any reform for the allocation of withholding tax risk between borrowers and lenders. These are issues to which the LMA is particularly attuned given its role in developing and maintaining market-standard loan documentation.

The LMA also supports the balanced and considered observations contained in the UK Finance response. In particular, we agree with its discussion of the practical complexities that can arise where treaty relief analysis involves branch structures; the operational challenges and timing issues that the current framework can create in syndicated lending transactions; the potential for proportionate simplification in lower-risk cases; and the importance of preserving certainty and established commercial arrangements within the lending market.

[1] For 30 years, the LMA has supported the loan markets, with a focus on enhancing liquidity, transparency, and sustainability. Today, with 850+ members in 69 jurisdictions, we represent an ever-growing diversity of participants in international capital markets, including institutional investors, private and public sector issuers, banks, non-banks, technology solution platforms and market infrastructure providers. For more information, please visit our website: www.lma.eu.com

Specifically, the LMA agrees with UK Finance that any new regime should seek to preserve certainty and avoid unintended consequences for existing commercial risk allocation in the lending market.

The LMA has therefore not sought to duplicate the detailed analysis contained in those submissions. Instead, we limit our comments below to matters of particular relevance to the syndicated lending market and market-standard loan documentation.

Question 9 – Do you have any comments on the potential impacts of these changes on tax receipts or avoidance/evasion behaviour? We are especially interested in how businesses and lenders might respond to changes.

The LMA publishes recommended forms of loan documentation that form the basis of most loan agreements entered into in the UK corporate lending market. That documentation reflects the generally accepted approach to the allocation of risk relating to UK withholding tax on payments of interest made to overseas lenders which has developed over many years around the certainty and mechanics of the current processes for obtaining treaty relief.

Against that background, the LMA considers it important that any reform preserves certainty and avoids unintended consequences for established commercial risk allocation in the lending market.

The LMA is supportive of introducing improvements to the current regime, which we understand can be operationally burdensome in certain circumstances. However, any reform should be pursued with a clear understanding that any changes to the current treaty relief framework may have implications for existing market-standard documentation and the contractual arrangements agreed between borrowers, lenders and other finance parties. In particular, any reform should avoid inadvertently requiring market participants to revisit established approaches to withholding tax risk allocation, documentation standards or gross-up provisions unless this is necessary to achieve the underlying policy objectives.

The LMA also believes it is important that any changes are introduced with sufficient lead time and appropriate transitional arrangements. Market participants will require adequate time to assess the implications of any new framework, consider whether changes to transaction documentation are required and, where appropriate, implement those changes in an orderly manner.

Given the LMA's role in maintaining market-standard documentation, any implementation timetable should similarly allow sufficient time for consultation with market participants and for any necessary updates to recommended forms of documentation before a revised regime takes effect.

We would be happy to make ourselves available for further consultation with HMRC in respect of this matter. Please contact Amelia.Slocombe@lma.eu.com or Jesse.Beardsworth@lma.eu.com should you wish to discuss any aspect of this response further.

Yours sincerely,

Jesse Beardsworth

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