

Andy Stewardson
HM Revenue and Customs
Room 3C/06
100 Parliament Street
London SW1A 2BQ

(Submitted by email to psa.consultation@hmrc.gsi.gov.uk)

18 September 2015

Dear Mr Stewardson,

Consultation Document – Deduction of income tax from savings income: implementation of the Personal Savings Allowance

The International Capital Market Association (ICMA) is responding to the above.

Representing a broad range of capital market interests including banks, asset managers, exchanges, central banks, law firms and other professional advisers, ICMA's market conventions and standards have been the pillars of the international debt market for almost 50 years. See: www.icmagroup.org.

ICMA is responding in relation to its primary market constituency that lead-manages syndicated, vanilla debt securities issues throughout Europe on behalf of corporate borrowers. This constituency deliberates principally through ICMA's Primary Market Practices Committee¹, which gathers the heads and senior members of the syndicate desks of 48 ICMA member banks, and ICMA's Legal and Documentation Committee², which gathers the heads and senior members of the legal transaction management teams of 21 ICMA member banks, in each case active in lead-managing syndicated debt securities issues in Europe.

We set out our response to Question 1 of the consultation in the Annex to this letter. We have not answered Questions 2 to 6.

Yours sincerely,

A handwritten signature in black ink that reads "C. Bellamy".

Charlotte Bellamy

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¹<http://www.icmagroup.org/About-ICMA/icma-councils-and-committees/Primary-Market-Practices-Sub-committee/>.

²<http://www.icmagroup.org/About-ICMA/icma-councils-and-committees/Legal-and-Documentation-Sub-committee/>.

ANNEX

Question 1: Other than the issues identified in this consultation, are there other key issues that need to be considered in relation to the interaction of the PSA and rules on deduction of income tax from interest and other savings income?

It is very important for the bond markets that any adjustments made to rules relating to the deduction of income tax from interest and other types of savings income following the introduction of the Personal Savings Allowance do not remove or negatively impact existing exemptions from the obligation to deduct income tax at source commonly relied upon by the bond markets, such as the “quoted Eurobond” exemption (section 882 Income Tax Act 2007) and the exemption for interest paid by banks in the ordinary course of their business (section 878 Income Tax Act 2007).

Bond investors expect payments of interest on bonds issued in international markets to be made free of any withholding or deduction on account of tax by the issuer and its agents. For example, a French investor buying a bond issued by a UK corporate would not expect UK tax to be withheld from payments under the bond. If it were so withheld, it would represent (at best) an administrative and/or timing cost for the investor, and (at worst) an absolute cost to the investor or the issuer (depending on the terms of the bond). In other words, the international bond market is, of necessity, a “gross paying” market.

Bonds issued in international markets are often held by investors through clearing systems such as Euroclear and Clearstream. Issuers and paying agents will not have any visibility as to the identity of bond investors when bonds are held in clearing in this way. Therefore, in order to be paid gross, the bond markets need to rely on exemptions from withholding which do not relate to the characteristics of the recipient of interest payable on the bonds. Because the quoted Eurobond exemption and the exemption for interest paid by banks depend on characteristics of the bonds or the issuer, they satisfy this requirement and are thus critical to the operation of the bond markets.

For these reasons, we do not express a strong preference between the options outlined in section 4 of the consultation document³, but simply highlight that whichever option is chosen⁴, the position under the existing exemptions to the obligation to deduct tax from payments of yearly interest relied upon by UK issuers of bonds should be retained in order to ensure UK issuers can continue to

³ There may be some advantage, however, in the simplicity that removing the obligation to deduct income tax from all non-TDSI interest (Option 2) would allow, although we acknowledge that this approach may pose some risks to HMRC in terms of eroding the UK tax base.

⁴ So if (for instance) withholding tax was abolished on payments to individuals (i.e. Option 3), it would still be important to retain the existing exemptions, because bond issuers and paying agents would not be able to determine whether or not investors were individuals where notes were cleared and so would not know whether or not to withhold from any given payment of interest.

The consultation document also envisages that individuals could opt to receive interest with or without tax deducted (Option 5). It would be important that any such rule of this kind did not cut across existing exemptions such as the quoted Eurobond exemption. At present, if notes are and remain listed on a recognised stock exchange, the issuer and paying agent can be comfortable they do not need to worry about the administrative burden of deducting tax and accounting for it to HMRC. If a handful of individual investors were to opt back in to withholding despite the fact that bonds are listed, this would be burdensome for the issuer and paying agent, and may cause difficulties with the clearing systems, which operationally are not equipped to deal with debt that is partly gross-paying and partly net-paying.

access the capital they need in the international bond market. Removing or amending the current exemptions so that UK issuers need to pay interest on their bonds net of income tax, rather than gross, would act as a serious disincentive to investors investing in UK companies' bonds, which could result in a competitive disadvantage to UK bond issuers vis-à-vis non-UK issuers and an increase in many UK companies' cost of funding. In addition, it would appear to be out of step with the policy direction of various tax regimes and the OECD towards information exchange (and away from withholding) in the context of cross-border markets.