Real Estate:UK response to HM Revenue and Customs' Consultation on Simplifying Treaty Relief from Withholding Tax on Interest

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Real Estate:UK

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Summary

As a capital intensive and long-term business involving very large, valuable and illiquid assets, the real estate sector is dependent on the availability of debt finance to supplement and complement the equity invested by owners. By way of context, approximately £180bn of debt is secured against commercial real estate investments in the UK (which represents in the region of £360m of real estate value, assuming typical loan to values in the region of 50-60%). This represents over half of the total commercial real estate investment market (which is valued at £500bn in total). Access to debt finance and certainty over tax treatment is therefore essential to investment across the UK real estate sector.

Many of the lenders that provide debt funding to real estate businesses are based outside the UK. Given that the loan market works on a presumption of gross payment (such that lenders expect to receive interest free of withholding, and borrowers expect to pay the net interest only (i.e. without having to "gross up" for any shortfall resulting from withholding tax)), under the current system for treaty relief, the ability for such lenders to lend is ultimately dependent on the relevant borrower having received a treaty direction from HMRC, following the making of the relevant treaty claim.

As discussed in this response, the current process is administratively cumbersome, with the potential for delay (particularly where it is necessary to involve two tax authorities). This is exacerbated where the funding is provided through a syndicated loan facility, given the potential for changes in the pool of lenders (requiring new treaty applications to be made). We therefore welcome the government's willingness to invite views on possible simplifications of the process for obtaining treaty relief, without having pre-determined a particular approach.

One of the main challenges when considering a new simplification mechanism is that while the obligation to withhold falls on the borrower, whether or not withholding tax applies is generally determined by reference to specific attributes of the lender (so, in relation to treaty relief, their entitlement to the treaty benefits is in question). If, following the Consultation, the government looks to implement a self-assessment system, it will be critical to ensure that it enables a borrower to access relevant information about a lender, as well as ensuring that, once a borrower has complied with their obligations under the new system, they can be certain that they are not at risk should it later be found that the information provided to them was incorrect.

We would anticipate that, in practice, the benefit of moving to a self-assessment system would be mainly felt in the commercial (i.e. third party) lending market. In this context, as the government will be aware, the commercial lending market tends to rely on standard form documents (being, in the UK, primarily standard forms agreement provided by the Loan Market Association (LMA)). Given the presumption of gross payment referenced above, these standard forms contain provisions that allocate risk of any withholding tax as between lender and borrower. It is therefore important that, in considering possible alternatives to the current system, the government takes into account the commercial context in which withholding tax risk is allocated - and does not therefore unduly favour one party over the other. Further, the transition from the current system to a different approach also needs to recognise the practical challenges for both borrowers and lenders in accommodating a different approach within existing contractual arrangements.

Our response includes general comments on the issues raised by the consultation, with our responses to specific consultation questions summarised in the appendix. We would, however, draw out the following key points below:

1. The current process needs changing
   The current treaty relief process can impose significant administrative burdens on borrowers, even where a lender has a DTTP passport. Regardless of whether, following this Consultation, the government decides to adopt a different process for accessing treaty relief, we urge the government to revisit aspects of the current process and identify where changes can be made to reduce some of those burdens. Possible changes to the current system identified by our members are detailed in our response to question 15 which, in our view, HMRC could - and indeed should - look at implementing now.

2. The need for shared responsibility between lenders and borrowers in any self-assessment system
   Withholding on interest effectively acts as a collection mechanism, with the

borrower accounting for tax representing the lender's liability. Treaty relief, whilst absolving a borrower from the need to withhold, is ultimately a relief of the lender. Any self-assessment needs therefore to impose obligations on both lender and borrower (not just the borrower). We therefore recommend that any self-assessment process adopts the same approach as used for the qualifying private placement exemption - meaning that a borrower is able to rely on a confirmation given by the lender as to their treaty eligibility. We discuss this further below.

3. Sanctions for non-compliance must be proportionate - particularly where there is no overall loss of tax to the Exchequer

   Under the current system, certainty as to whether withholding applies to a particular payment is provided by HMRC through the issue (or not) of a treaty direction. As a result, non-compliance - namely, not withholding absent a (valid) direction - is relatively clear-cut, with HMRC acknowledging through its (albeit currently paused) concessionary treatment that the consequences of such non-compliance are linked to whether or not there is a loss of tax to the Exchequer.

   Under a self-assessment system, the borrower will no longer have the certainty of an HMRC direction. If alongside that reduced certainty, a self-assessment system brings with it a greater risk of material sanctions should something go awry, borrowers are likely to be reluctant about switching to a new way of accessing treaty relief. Accordingly, in our view, a borrower that fully meets its compliance obligations should not be in a worse position than they would be now when relying on a direction. Similarly, as long as a lender was treaty entitled, a borrower should not be liable for unpaid withholding tax (or indeed late payment interest) if it is later found that tax should have been withheld but was not because, for example, the borrower did not meet any related reporting obligations. We comment further on a possible set of proportionate but effective sanctions below.

Response to Consultation

General comments: Current process

1. The current process for obtaining treaty relief imposes significant administrative burdens for lenders and borrowers - and for HMRC. As a result, there can often be delays in receiving a treaty direction (a Direction), which can lead to cash-flow costs for either, or both, borrower and lender.

2. In addition, the nature of the UK's withholding tax regime means that, as part of negotiations on withholding tax risk allocation, procedural points (relating to both process for, and timing of, treaty claims) often need to be addressed in loan negotiations, adding to legal costs for both lenders and borrowers. This is the case notwithstanding the existence of standard form loan agreements published by the Loan Market Association (LMA). We set out below some examples of the issues our members experience in practice.

Non-DTTP Lender

3. Where a lender is entitled to full relief from UK withholding tax on interest (WHT) but does not hold a 'treaty passport' under the DTTP scheme (a DTTP Passport), the lender claims relief by submitting DT-Company (or DT-Individual). A claim cannot be made until after the loan agreement has been signed. Funds will generally be drawn down under the loan within a short period of signing.

4. The borrower must make payments of interest to the lender subject to WHT unless and until it receives a Direction from HMRC permitting gross payment. There is no requirement on HMRC to respond to an application within a specific timeframe and so there can be no certainty as to when a Direction might be received (and anecdotally our members have referenced cases where it has taken several months to receive a Direction). Given that interest would generally be expected to be paid quarterly, the

current system creates a risk that, at the time of the first interest payment, no Direction will have been received.

5. We discuss below more generally how the LMA standard forms seek to allocate withholding tax risk between the parties to a loan, but note in this context that the LMA forms are broadly based on an assumption that a lender (a) is entitled to treaty relief and (b) holds a DTTP Passport or has filed a DT-Company form (including proof of its tax residence from its domestic tax authority). Where a lender falls in those categories, in broad terms, the LMA position is that the lender is entitled to receive the full (i.e. gross) amount of interest to which it is entitled (regardless of whether or not a Direction has been received by the time of the relevant interest payment). As a result, if the borrower has not received a Direction by the first interest payment, it will typically be required to gross-up interest payments (so, assuming an interest payment of 10, the borrower would pay 10 to the lender (being net interest of 8 plus a gross up amount of 2) and 2 to HMRC (being the amount of income tax currently required to be deducted under s851 Income Tax Act 2007[1]). A borrower may therefore look to agree bespoke amendments to the LMA standard form to manage this "process" risk (resulting in additional legal costs for both parties, generally with the borrower required to meet both its and the lenders' costs). A common approach here is to delay the first interest payment date (by setting a date by which it seems reasonable to anticipate that a Direction will have been received). This "solution" creates a cash-flow cost for the lender and may not fully mitigate the risk that HMRC may not have issued a Direction by the time of the delayed interest payment date.

Lender with DTTP Passport

6. Similar issues apply where a lender holds a DTTP Passport as, whilst the DTTP scheme is designed to mitigate some of these frictions, strictly speaking, the borrower cannot pay gross until it receives a Direction (and, as noted above, there is no set timeframe

[1] We note that, from April 2027, the income tax amount deducted by the borrower will be 2.2, meaning the payment of 10 to the lender will consist of net interest of 7.8 and a gross up amount of 2.2.

for a response from HMRC).

7. Whilst, helpfully, by concession HMRC states in its guidance (DTTP30610) that borrowers may provisionally withhold at the relevant treaty rate (which may, depending on the treaty, be 0%), this is only if the borrower has submitted Form DTTP2 online and received an acknowledgement of the submission from HMRC. Whilst this may help mitigate the timing risk that is inherent in the DT-Company route, it still raises a number of issues for the parties:
    7.1. there remains the administrative burden of submitting a form to claim treaty relief, which creates additional cost and, as we assume HMRC will be aware in the context of applications for the concessionary treatment set out at INTM413230, can sometimes be overlooked or forgotten by borrowers;
    7.2. notwithstanding that the lender holds a DTTP Passport (which the borrower could reasonably have expected means a Direction will be forthcoming), HMRC could ultimately decline to provide a Direction. In this case, if the borrower, provisionally paid gross (as per the applicable treaty) in reliance on DTTP30610, they may nevertheless be liable for the failure to withhold, and potential interest and penalties;
    7.3. HMRC's guidance at DTTP30610 is only in point where the borrower applies online and receives an acknowledgement of submission, so may not apply in all cases; and
    7.4. a lender must apply to renew its DTTP Passport every five years, which creates an administrative burden in tracking expiry dates and reapplying for a DTTP Passport (especially where a group includes a large number of lending entities). This creates risks of WHT being imposed on a lender that is ultimately entitled to full treaty relief, simply due to administrative failure or delay.

8. Even where the borrower has completed the procedural steps and obtained a Direction, the borrower will need to ensure it maintains relevant records (the Direction and, where it provisionally paid gross, evidence of its online submission of

Form DTTP2 and acknowledgement receipt) in order to be able to substantiate the basis on which it paid gross. For larger (syndicated) loans, that evidence will be required for a (changing pool) of multiple lenders. This creates a further administrative burden in record keeping. There can be situations where, over time, borrowers are unable to locate sufficient evidence of having undertaken these steps (even where there is circumstantial evidence to suggest that the relevant procedural formalities were met) - for example, as these are often dealt with “in-house”, issues may arise following changes in personnel or where there has been a take-over. In this context, a failure to file Form DTTP2, or to have retained sufficient evidence to support gross payment, may often only be identified years later - for example during a tax due diligence process as part of a sale of the borrower - at which point it may be too late to remedy the position even under HMRC’s concessionary treatment (e.g. if the relevant loan has been repaid and/or a lender has been wound-up and/or the mistake was made more than 4 years prior to being discovered such that the lender is precluded from claiming a WHT refund).

9. Further, there can be complications where a lender intends to use the DTTP Passport scheme, and so has applied for a DTTP Passport, but does not have a DTTP Passport at the time the loan agreement is signed. This can be common where funds for the loan are being provided by a private credit fund which typically will establish a special purpose vehicle to act as lender for a particular loan. If that vehicle is either incorporated specifically for that loan, or making its first loan with UK source interest, there may be no pre-existing DTTP Passport at the time the loan is advanced. As the LMA standard forms assume that a lender edited to treaty relief either holds a pre-existing DTTP Passport or will be claiming treaty relief other than pursuant to the DTTP Passport scheme, this is another example of where the parties will need to negotiate bespoke provisions to deal with how WHT risk is allocated between them simply because the UK operates two different administrative processes relating to obtaining a Direction.

General comments: a new "self-assessment" model

10. We welcome the proposal for self-assessment of treaty relief provided that it can be implemented in a manner that, compared to the current system, does not expose borrowers to greater uncertainty or significantly increased risks in relation to their statutory obligations in relation to WHT (and, as a consequence of those statutory obligations, to a lender under standard form loan agreement).

11. The particular concern here is that, whilst the availability of relief from WHT is dependent on the lender's status (i.e. legal form, residence, beneficial ownership and purpose) - making the lender the best person to self-assess eligibility - it is the borrower that has the legal obligation to withhold (and so is at risk should it fail to withhold tax from a payment of interest when it should have done so). Under the current system, the need for a Direction from HMRC provides certainty for the borrower, with loan negotiations on the contractual allocation of WHT risk reflecting the certainty that a Direction provides. In contrast, under a self-assessment system, the borrower has to satisfy itself as to the lender's treaty eligibility - and the issue here is that it may not have sufficient information available to it to self-assess, to the required standard, if the lender is treaty entitled even with the benefit of information from the lender (particularly where there is a third-party lender). This results in putting disproportionate risk on a borrower: i.e. the borrower takes on the risk (and potential cost) of WHT without necessarily having access to the information needed to assess that risk adequately (including where the self-assessment process simply requires "reasonable belief" as to the lender's status). Whether or not a lender is entitled to treaty relief is not as straightforward as determining whether either of the UK bank or UK-UK exemptions apply. Recognising this imbalance between borrower and lender in terms of lender status for treaty purposes, the qualifying private placement (QPP) exemption intentionally required the lender to confirm treaty status, with the borrower entitled to rely on that confirmation unless informed otherwise (by the lender or HMRC).

12. In our view a similar approach should apply to a self-assessment system. Based on current market practice, it is unclear as to the extent that a third party lender would be willing to provide the amount of information that a borrower would need to be comfortable in forming a view as to the lender's treaty status (particularly given the potential consequences if that view later prove to have been incorrect). In this context, the representations (if any) currently given by a lender relying on a tax treaty to receive interest gross in the current market standard forms are limited: whilst the agreement sets out different categories of lender entitled to receive gross payment, and the lender confirms which category it is in, this is done as a "notification", generally excluding any liability to the borrower. For example, where a lender has a DTTP Passport, any representation will generally be limited to confirmation of that fact with the lender separately providing the passport number. The borrower is able to obtain reassurance as to the lender's status by checking HMRC's register of passport holders. Whilst we acknowledge that current market norms in loan documentation have developed in the context of the existing WHT rules, we nevertheless anticipate that, in practice, given how the commercial lending market operates, lenders may be unwilling as a commercial matter to share further details of their tax status (particularity as doing so is likely to result in their taking greater commercial risk as to WHT than is the position now) absent a statutory obligation to do so.

13. We therefore consider that for a borrower to be able to have sufficient certainty as to the lender's treaty eligibility, a self-assessment system should require the lender to provide confirmation that it is treaty entitled, with the borrower able to rely on that confirmation (unless and until the lender withdraws it or HMRC issue a direction to the borrower that it needs to account for WHT). As above, this approach has precedence given the role of the "creditor certificate" under the QPP exemption (see regulations 3(1)(b) and 5 of The Qualifying Private Placement Regulations 2015 (QPP Regs). However. unlike the QPP exemption, the existence of specific reporting obligations requiring the borrower to provide details of its use of self-assessment would give HMRC visibility of loan arrangements. A reporting system should therefore

provide Exchequer protection enabling HMRC to identify where further enquiry is needed into particular arrangements (and if necessary provide grounds for HMRC to override the borrower's self-assessment by directing the borrower to deduct WHT going forward). We comment further on reporting below.

14. In relation to the confirmation to be provided by a lender, we consider that this should be as to their treaty eligibility: namely, their residence in a particular treaty jurisdiction (and that they do not carry on business in the UK through a permanent establishment to which the loan is attributable); their beneficial ownership of the amounts to be paid to them and their satisfaction of all other conditions in the relevant treaty for exemption from WHT. (We note that this may need to be adapted where, say, the lender of record is a partnership or other transparent entity to reflect the treaty status of those beneficially entitled to the interest. In those scenarios, we consider that, where appropriate, there should be an option for the lender of record to provide the confirmations on behalf of those beneficially entitled to the interest.

15. By allowing the lender to confirm its treaty residence, the need to obtain a certificate of residence from their "home" jurisdiction is avoided, which will also help streamline the process given the delays that this aspect of the current process can create). Further, given the role of the principal purpose test (PPT) in (most of) the UK's tax treaties, the confirmation as to meeting "all other conditions" of the treaty should mean that there is no need for an equivalent to Condition B in regulation 5 of the QPP Regs (which pre-date the adoption of the MLI under BEPS Action 6, which only took effect from January 2019). Our concern here is that if such a confirmation were to be added, there may be additional negotiation frictions as between borrower and lender, particularly if lenders sought to effectively transfer that risk to borrowers to mirror the existing position under LMA (where the borrower generally assumes WHT risk, save in relation to a change of law: see further below). In contrast, a confirmation in relation to treaty eligibility as suggested above has the benefit of familiarity to lenders as it

effectively replicates the definition of "Treaty Lender" contained in current LMA standard forms.

16. Further as we consider that the self-assessment process should be available to all loans in respect of which there is a treaty entitled lender, we do not consider that there should be any distinction between lenders depending on whether they are resident in a qualifying or a non-qualifying jurisdiction (as defined in s173 TIOPA). To the extent HMRC's compliance work necessitates further scrutiny of loans where the lender is in a non-qualifying jurisdiction, we consider that such loans should be identified separately through any reporting system (rather than being excluded from the self-assessment process etc) where the applicable treaty allows for exemption from withholding. (Similarly, any reporting system could require a borrower to state if it is connected with the lender for tax purposes.)

17. In this context, we can see merit in retaining the DTTP Passport scheme (and register) to sit alongside the new self-assessment process. Providing a confirmation as to treaty eligibility on which a borrower then relies will have an impact on (contractual) allocation of WHT risk between the parties to a loan. If a lender is able to maintain a DTTP Passport, the existence of that passport (in broad terms, a pre-clearance of general treaty eligibility) would allow lenders, as now, to use the passport as evidence of their general treaty eligibility, therefore reducing any perceived risk from giving a confirmation to the borrower.

18. As referenced above, as is the case with the QPP exemption, under self-assessment the borrower would be entitled to pay interest without WHT (or at a reduced treaty rate of WHT) unless and until the lender withdraws the confirmation or HMRC informs the borrower (and, we suggest, also the lender) by notice that the confirmation can no longer be relied on for these purposes (which HMRC should only be allowed to do where it has reasonable grounds to suspect that treaty relief is not available). Payments made after receipt of such a notice would be subject to WHT. We discuss

further below our view of proportionate sanctions in this situation.

19. At Question 7, there is a reference to the possibility of a parallel advance clearance facility under which a borrower could obtain certainty as to the WHT position. It seems to us that an "advance clearance" process is basically the same as retaining the current system under which an application is made for a Direction (given that when the application is made, the parties are hoping that the Direction will be given in advance of the first interest payment date). Our concern with this suggestion is that, by effectively retaining the current system, obtaining advance clearance would risk becoming the "default" position under third-party financings as it offers the safest route for managing WHT risk. We therefore do not consider that the introduction of an advance clearance system would be helpful.

20. However, as there can be genuine uncertainties on aspects of treaty eligibility (for example, questions around beneficial ownership in light of *Indofood* or where the lender is a partnership or equivalent entity), we would recommend that HMRC ensure that the current scheme for non-statutory clearances is open to borrowers and lenders in relation to WHT status questions. This would also have the benefit of maintaining (albeit under a different process) HMRC's current practice in relation to *Indofood* as set out in INTM332070. It would be possible for an Annex to be added dealing specifically with the information required if a clearance request relates to withholding tax, with HMRC having the right not to reply should it consider that the clearance relates to "planning" etc. In this way, by treating an approach to HMRC for their views in relation to a WHT issue in the same was as any other issue raised by way of non-statutory clearance application, it should be possible to minimise the risk of creating "an alternative" to self-assessment.

21. However, we would recommend that the ability to apply for a Direction is retained , albeit for a limited purpose. Under QPP, if HMRC cancel a creditor certificate, the parties have the ability to then apply for a formal Direction to reinstate gross payment.

Under a self-assessment process, there should be a route to appeal against a HMRC "cancellation" of a lender confirmation: the simplest approach may be to allow (in this case only) a formal application for a Direction to be made, rather than creating stand-alone appeal/review rights.

General comments: base erosion/ "anti-avoidance measure'

22. The Consultation emphasises the need to balance reducing burdens on businesses with Exchequer safeguards given that WHT is considered as "a key anti-avoidance measure" without which "there is a risk that profits could be stripped out of the UK and avoid taxation entirely".

23. Whilst we agree there is a need for safeguards to counter any risk of UK base erosion, such safeguards should be proportionate to the risk. In this context, there have been significant changes to the UK tax rules in recent years since the OECD published its reports on Base Erosion and Profits Shifting (BEPS) in 2015: these include the corporate interest restriction (CIR), the hybrid mismatch rules and amendments to the UK transfer pricing rules. These supplement existing provisions within the Corporation Tax Acts concerned with limiting interest deductibility where there is a perceived risk of profit shifting (such as the distribution rules and the "unallowable purpose" rule which, as recent Court of Appeal cases show, can apply where the "tax advantage" sought is relief for financing costs). In addition, in response to concerns about treaty-shopping, many of the UK's tax treaties now include the principal purpose test following the OECD's work on BEPS6.

24. Accordingly, we would question whether the same risks in relation to base erosion that applied as and when the current system was put in place (noting the regulations that address treaty directions for interest date from 1970) apply now. In any event, we would anticipate such risks to be comparatively rare where the loan is advanced by a third-party lender (as is recognised in the relief within CIR for third party financing for certain infrastructure projects, including certain real estate businesses).

25. We recognise that the current system provides HMRC with visibility as to the principal terms and parties to loans, which in many ways operates as a form of “early waring system” that further enquiries into possible thin capitalisation may be needed. However, taking account of the recent changes to transfer pricing reporting for some companies, and the legislative changes referenced above, we consider that a new (and different) WHT reporting system alongside self-assesmnet could provide HMRC with equivalent information in support of its compliance activities.

26. Question 6 queries whether a treaty self-assessment process should only apply where the risk of base erosion is considered to be low from HMRC’s perspective, suggesting possible options as being within the transfer pricing rules or Pillar 2, or having interest costs in excess of the CIR de minimis. In our view, it would be neither appropriate or practicable to limit any new self-assessment process in such a way. In particular, a major issue in relation to each of the suggested options is that the borrower’s position under each of those regimes (and potentially the thresholds themselves) can change over the life of a loan – with, in relation to Pillar 2 and CIR, the borrower’s position also influenced by the position of the group of which it is a member overall. Significant practical difficulties could arise if a borrower is, at first, able to self-assess but then, a couple of years later, has to apply for a Direction because a threshold has been reached: this means that either the parties would default to obtaining a Direction at the outset or would have to negotiate complex provisions in the loan agreement to address both scenarios (in terms of setting out the process to be followed if the borrower can no longer self-assess and risk allocation if WHT applies on a given interest payment date because the borrower is “between” treaty processes) - with the borrower then required to continually monitor the position (risking mistakes, and therefore administrative burdens for them, and HMRC, as a result). .

27. However, if HMRC's compliance experience means that there is an evidence to support certain specific scenarios being excluded from self-assessment because of the risk of base erosion (a risk that cannot be mitigated in other ways), we acknowledge that one option may be to exclude these scenarios from self-assessment, Any exclusions however would need to be clearly defined and factually based so a borrower has certainty as to when it is able to self-assess, and when a different approach (i.e. applying for a Direction) is needed from the outset. As we anticipate that the likelihood of base erosion as a result of commercial third-party loans would in any event be low, it is important however that any Exchequer protections do not have unintended consequences on the availability of treaty relief for commercial lenders.

General comments: reporting

28. Whereas under the QPP exemption, creditor certificates are retained by the borrower and only produced to HMRC on request, we agree that in relation to a general treaty self-assessment system "maintaining effective reporting standards would be a crucial aspect of any simplification". This is because the approach taken under QPP is in the context of an exemption developed for a particular purpose (to encourage SMEs to access the private placement market), with that policy aim reflected in the various conditions that have to be met in order for the QPP exemption to be available (of which treaty entitlement is just one). As any new self-assessment process will need to be of general application (i.e. to all loans, not a particular (defined) subset), we acknowledge that the QPP approach is unlikely to be appropriate here.

29. In terms of reporting, the current system (CT61) requires a quarterly report to be submitted, with any withholding tax accounted for following that submission. However the recently published draft International Controlled Transaction Reporting Regulations 2026 require annual reporting only in relation to transactions where the threshold condition is met, with the deadline for reporting coinciding with that for the company's corporation tax return. Whilst the frequency of reporting is primarily a

question for HMRC in the context of their compliance processes (and resources), we consider that, if feasible, annual reporting of interest payments where self-assessment has applied would be appropriate here as well. Reporting of such payments "side-by-side" with International Controlled Transactions may also make it easier to avoid duplication - with the benefit to both the borrower and HMRC of the relevant information being provided at the same time (albeit potentially across two different reports). Further, given the Consultation references the risk of base erosion, submitting an annual return alongside the CT return will allow HMRC to review all relevant information relating to a borrower's financing arrangements (including whether or not the borrower has itself restricted the amount of corporation tax relief available for interest payments in its corporation tax return) at the same time when assessing risk.

30. We consider it reasonable to require all payments to which treaty relief is applicable (and so within the scope of self-assessment) to be reported (excluding however payments where another exemption, such as QPP, is being relief on) and so the reporting would cover payments where there is partial relief under a treaty and where no UK income tax is due (because of complete relief being available under a treaty).

31. We see two principal benefits of "full" reporting - for HMRC and for borrowers. For HMRC, "full" reporting ensures visibility of all transactions where self-assessment is being relied on, which we assume should assist in mitigating concerns of base erosion. For borrowers, "full" reporting to HMRC offers the benefit of their "self-assessment" processes being placed within a legislative framework in relation to HMRC scrutiny: not only will it mean that, should HMRC have any queries, set timelines and processes will apply, but also provides an opportunity for early resolution of any problems, avoiding a potentially significant future liability should, several years on, a mistake be found to have been made. This is a particularly important issue, as we assume HMRC will be aware in the context of applications for the concessionary treatment set out at INTM413230 (and indeed the uncertainty caused by the current

pause in the application of that concessionary treatment).

32. In this context, we understand from members that there can be cases where issues as to whether a borrower has fully complied with their WHT obligations can often be identified as part of only at the point of a possible corporate sale as part of due diligence. In such situations, a seller would look to quantify that risk in order to assess how best to deal with it as part of overall negotiations (and, although we understand HMRC's pause of its concessionary treatment is outside the scope of this Consultation, we understand from members it is creating significant challenges in quantifying risks where a potential mistake is identified, given the resultant uncertainty as to (a) the extent of the potential liability resulting from that mistake and (b) when it will be possible to start discussions with HMRC on it). As a result, we consider it important there is a set process (and time limits) for enquiries by HMRC into a borrower's application of the self-assessment process: without this, it will be very difficult for risk in this area to be properly evaluated and assessed, potentially having a dampening effect on transactions.

33. The existence of a "full" reporting, and related enquiry, framework is also relevant to any design of appropriately targeted and proportionate sanctions for non-compliance: we discuss sanctions further below.

34. We consider that reporting of self-assessed treaty relief should be by way of a (new) process. We do not consider reporting should be dealt with as part of royalty payment reporting (particularly as not all companies will be making royalty payments). Should this simplification be taken forward, HMRC should consult with stakeholders on the design of the new reporting requirement - e.g. format, nature of information required - to ensure that the resulting administrative burden for borrowers is proportionate and takes account (where relevant) of other reporting obligations in relation to the same matters. At the same time HMRC may wish to review the CT61 process with stakeholders. HMRC may also want to consider having a right to require individual

lender confirmations to be produced to it (as is the case under the QPP Regs, reinforcing the need for borrowers to obtain, and retain, lender confirmations given the possibility of an HMRC request).

35. Further, as referenced above it may be possible to include in any reporting process elements linked to HMRC's concerns around base erosion, For example, current standard Direction conditions include "change in name or address" and "change in ownership or business activity": rather than as now have such changes lead to expiry of a Direction (such that the borrower needs to re-apply for treaty clearance, allowing HMRC to assess whether the relevant change has an impact on treaty relief), the new reporting system could simply require the borrower to notify HMRC if there have been any such changes (and as a result "nudge" the borrower to disclosing such matters, particularly where (from their perspective), the relevant change has no impact on the lender's access to treaty benefits and so would not necessarily suggest to them a need to notify). This would enable HMRC to access the same information that they currently look to obtain now by virtue of the conditions attached to a Direction.

36. Overall, by combining a straightforward self-assessment system with a robust (but proportionate) reporting system, we would hope that there would be a significant reduction in administrative burdens and costs, both for taxpayers and for HMRC. This is because there would be no need to process treaty relief forms and, provided the new system is clear and easy to understand, there should be a reduction in the number of voluntary disclosures due to WHT "mistakes" (that in many cases will have ultimately fallen within the concession or are otherwise unwound via lender reclaims, with no loss to the Exchequer).

General comments: sanctions

37. We agree that any sanctions for non-compliance should be proportionate, and in particular should recognise the role of penalties in incentivising taxpayers to meet their complaint responsibilities in a timely and accurate manner (and not just as a

deterrent). In addition, in our view, any sanctions system should recognise that, where a lender is entitled to treaty relief, the failure to withhold is, in an economic sense, a timing cost for the Exchequer only (as recognised by HMRC's concessionary treatment as set out at INTM413230). Further the sanctions regime should also recognise that, although the obligation to withhold falls on the borrower, assessing whether treaty relief is available is, in practice, a matter for which both borrower and lender, share resposnibility.

38. The Consultation sets out three different examples of non-compliance. which we discuss in turn. Our responses to this part of the Consultation are predicated on the borrower being entitled to rely absolutely on a lender confirmation as to treaty eligibility under any new self-assessment process (being the basis on which we consider the self-assessment process should operate for the reasons we set out above).

39. In addition, we would emphasise the importance of HMRC providing clear guidance in advance of any new system coming into effect, setting out clearly what both borrowers and lenders will need to do, and the consequences of not doing so. This is particularly important given the longevity of the current system.

Treaty relief is applied but the conditions are not met:

40. In the context of a self-assessment system, we consider that there are two variants of this scenario. The first is where the borrower has fulfilled its responsibilities under the self-assessment scheme (including having obtained any required lender confirmations) but it is then found that the lender was not treaty entitled. The second is where the treaty conditions are not met and additionally the borrower has not complied with its obligations under the self-assessment system.

41. In the first of these, assuming that the borrower is permitted to rely on lender confirmation as to treaty eligibility, then the relevant "non-compliant behaviour" is that

of the lender (not the borrower). In such a case, the immediate sanction would be a direction to the borrower that it can no longer rely on the lender's confirmation with effect from a specified date (not earlier than the date the direction is received), so that all future payments are made net of WHT. This mirrors the approach taken in the QPP Regs (see regulation 7(5)).

42. As the borrower has complied with its obligations, we do not consider it would be appropriate to charge the borrower penalties: there can be no question here that it has engaged in careless or deliberate behaviour. For the reasons discussed above, we consider that the borrower should be able to rely absolutely on the confirmation given by the lender (as only the lender will have access to the information that determines their treaty status). Similarly, we do not consider it appropriate to charge the borrower interest on amounts not withheld in the past: it is not the borrower that has been non-compliant.

43. In terms of payments made to the lender without WHT (when WHT should have applied), again the immediate sanction would be a direction to the borrower to apply WHT to future payments. We consider the approach taken should be based on that set out in regulation 9 of the Double Taxation Relief (Taxes on income) (General) Regulations 1970 such that recovery of income tax (and interest) from the lender, whether by direct assessment as miscellaneous income or by directing the borrower to make additional deductions on account of amount due. Where the lender has a treaty passport, HMRC will also have a number of sanctions available to it under the rules of the scheme (including withdrawal of the passport) - noting that, as the DTTP scheme is an administrative process, it is open to HMRC to amend the rules at any time.

44. Whilst we recognise that recovery of tax from a non-resident is less straightforward than recovery from a UK borrower, nevertheless in our view it would not be proportionate to seek to recover amounts from the borrower when they are not

themselves responsible for the non-compliance. Further, increased co-operation between tax authorities in recent years may also facilitate recovery of tax debt from a lender in this situation.

45. In the second situation where the lender is not entitled to treaty relief, and the borrower has not complied with its obligations under the self-assessment process, we consider that, again, the amount of income tax that should have been withheld, but was not, should be revived from the lender in one of the ways set out in regulation 9 of the Double Taxation Relief (Taxes on income) (General) Regulations 1970 (given that withholding effectively operates as a collection mechanism the liability to tax on the interest should rest with the lender). However, in this scenario if the compliance failure is a failure to comply with any requirement that needed to be met in advance of paying interest, there is a case for penalties applying to non-compliance (as this would encourage borrowers to obtain confirmation from the lender as to its status).

46. The rationale for this suggested approach is linked to our view that a borrower should have certainty as to its position vis-a-vis HMRC should it comply with its obligations under the new system - and hence, where the lender is not treaty entitled, it is the lender that should be liable to income tax on interest paid to it without WHT. However, although this is the position implied by regulation 9, we recognise that the stand-alone nature of the obligation to withhold means that HMRC have the ability to assess the borrower to (non-withheld) income tax, leaving it to the borrower to recover equivalent amounts from the lender contractually (to the extent it is able to do so). As a result, we appreciate that the government may be uncomfortable with foregoing the ability to recover unpaid income tax from the borrower. However if in either of these two scenarios, the borrower could be liable to income tax on interest payments, we consider that this should only be the case where there is some “fault” by the borrower - so, for example, the borrower “knew” the lender was not treaty entitled (as in such a circumstance it would not be appropriate to allow the borrower to rely on the confirmation given to it) - balancing here any responsibility placed on

the borrower because of how sanctions are structured with the need for a borrower to have the ability to rely on the information given to it by the lender, particularly where that lender is a third party).

Treaty relief is available, but the borrower does not obtain (an advance) lender confirmation before paying interest gross

47. In this scenario, there would be no “loss of tax” as it were (as contrasted to the position where the lender was not treaty eligible). Reflecting the approach taken by HMRC in their concessionary treatment, there should be no assessment in relation to the income tax that should have been withheld in this scenario - and equally there should be no question of late payment interest (as treaty relief was available). We therefore consider any sanction should be limited to penalties for the non-compliance involved.

48. Given that there is no “loss of tax”, it would not be proportionate to charge a tax-geared penalty. We would recommend HMRC consider setting a stand-alone penalty scale in this context, adopting the approach used elsewhere so that each act of non-compliance is allocated a particular number of points - so the amount of penalty charged increases if the borrower repeats their behaviour. There should also be a means of reducing penalties if the borrower can prove they had a reasonable excuse for not having obtained a lender confirmation (although in practice we would expect that the circumstances in which this would apply are likely to very be limited).

Treaty relief is available, and the borrower has met the self-assessment conditions, but there does not comply with reporting requirements

49. In this scenario, the lender is eligible for treaty relief and the borrower has met its obligations in relation to self-assessing the lender’s eligibility. There is therefore no loss of tax (with the borrower’s compliance concerning pre-conditions to relief meaning less risk of loss of tax).

50. The reporting requirements should be treated like any other return, and so failure to file a return should be subject to a fixed penalty only (with the possibility of a higher penalty should non-reporting recur). There should be no other sanctions.

51. As can be seen from the above we consider that, vis-à-vis the borrower, sanctions for non-compliance should not include assessing the borrower for the amount of tax that should have been withheld. Although not of direct relevance to the borrowers position vis-à-vis HMRC, its worth noting the potential for financial consequences under the terms of the relevant loan agreement (based on current LMA standard terms, which are generally used in most commercial lending) where a borrower mistakenly pays gross (so there is a loss of tax). Assuming interest of 100, then on the interest payment date the borrower would pay 100 to the lender (in effect "grossing" up the lender although no WHT is deducted). If it later pays the 22 by way of WHT to HMRC, it will be required to notify the lender (as a payment has become subject to WHT). If the lender was not treaty entitled, then the borrower will need to contractually recover the "mistaken" gross -up from the lender; if the lender was treaty entitled, then although there is likely to be a provision requiring the parties to co-operate in making a treaty claim, this may be limited to applying for a Direction, rather than reclaiming tax that has been withheld. If, regardless of whether or not there is an obligation to do so, the lender does reclaim the WHT from HMRC, the lender is not obliged to pay the amount reclaimed to the borrower: instead, the lender only has to pay the amount it determines (at its discretion) can be paid to the borrower without prejudicing its own after-tax position. Therefore, a borrower that does not comply with its WHT obligations fully may incur a commercial penalty as well as a tax penalty.

General: transition to a new self-assessment regime

52. There are two aspects to transition to a new process for obtaining treaty clearance: first, in relation to the parties' statutory tax obligations and secondly, in relation to the impact of the change on parties' existing contractual obligations. Given that the commercial lending market operates primarily by standard form documentation

drafted on the basis of the current regime, any arrangements for transition will need to take into account the likely need for a different risk-allocation between lender and borrower in the event that a self-assessment system is enacted (as well as the need to cater for the new procedural requirements).

53. In relation to statutory tax obligations, as a general matter, we would assume that the intention would be for the new system to apply to interest payments made from a specified date (Day X). On this basis, it is in principle possible for all loans (whether made before or after Day X, to benefit from the new process on the first interest payment date after Day X. However, for existing loans to benefit from the new process, a borrower would need to self-assess each treaty lender - obtaining the required necessary lender confirmations - as well as invest in new systems to manage (new) reporting obligations. Whilst a reasonable lead-in time should allow this to be done in theory, nevertheless the amount of work that will need to be done in some groups cannot be underestimated - as debt is an important part of the funding mix of real estate businesses (for both developers or investors),there may be multiple loan arrangements (and multiple lenders) to review, particularly for larger corporate groups where individual properties are often held by different SPVs, and are subject to stand-alone financing arrangements. This work would also take place in the context of such borrowers being able to pay gross to their treaty-entitled lender under an existing Direction - so there is no clear commercial benefit in revisiting the existing arrangements. Equally, for lenders, the administrative burden may be significant: where the lender is active in the UK market, they will be receiving requests from multiple borrowers for confirmations as to status at the same time across the UK loan book. This process would also potentially give rise to additional costs for borrowers, as lenders are likely to charge a fee for providing such information (particularly it, at the same time, there is need to amend the underlying loan agreement to reflect the new system). In addition, the borrower would generally be required to pay the lender's legal costs in making changes to the loan, as well as its own.

54. In our view, there would therefore need to be a transition period in which both treaty clearance systems continue to operate in parallel. Whilst we acknowledge one option may be to deem an existing treaty clearance as confirmation of a lender's status that the borrower can rely on for self-assessment purposes, we have reservations about this as an approach given the nature of standard form documents (see further below). We therefore consider that, where a borrower has obtained a Direction under a loan, the Direction should continue to apply as now - and, as and when that Direction expires, the borrower should have the option of renewing it as opposed to having to then apply self-assessment. Whilst we appreciate that this may mean that HMRC will, for a time, continue to have administrative burdens in terms of processing applications for Directions, over the medium term, this will reduce (and to the extent Directions are "whole of life" of the loan, such burdens would not arise in practice).

55. In relation to contractual obligations, where a loan is between related parties (such as a loan made between group companies, or a shareholder loan), it should be relatively straightforward to manage transition to the new system. However, the position is more complex in relation to a commercial loan, made on standard LMA terms.

56. As referenced above, the approach taken in LMA standard forms has been shaped by the current system where, for treaty lenders (including those with DTTP Passports), certainty as to status is ultimately provided by a Direction. Under the standard "Taxes" clause, (in broad terms) as long as a treaty lender (being a lender eligible for treaty relief) co-operates with the borrower in relation to procedural formalities, it is generally not exposed to WHT risk unless WHT applies because of a change in its own circumstances (i.e. it is no longer a treaty lender). In particular, a borrower generally takes change of law risk (i.e. where a lender ceases to be entitled to treaty relief because of a change in tax law or practice). Further the WHT status of the day one lender will generally impact on the rights of any new lender that acquires the original lender's participation in the loan. The standard clauses do not envisage any process that does not involve a Direction.

57. If a self-assessment system were introduced, we would hope that the LMA would provide new standard form language for parties to adopt, including by way, say, of an annex to amend existing loans. A new self-assessment system may involve a different approach to risk allocation - meaning that both borrower and lender will need to assess the implications for them. This may mean, that depending on the position each takes, there is a need to negotiate changes to the (revised) standard form linked to the particular circumstances of the parties (and indeed negotiating strengths given the LMA 's role as a primarily lender-focused organisation) - involving time and cost (particularly, as referenced above, lenders will typically charge a fee to the borrower when amendments are made to a loan agreement, as well as requiring the borrower to reimburse their legal costs). Therefore, where there is an existing loan in place, a borrower may prefer to continue to rely on an existing Direction, rather than incur additional costs for no obvious benefit (particularly if say the loan is midway through its term, with only 1 to 2 years remaining).

General comments: changes to the current system

58. We set out below some possible changes to the current process which could be taken forward independently of this consultation, particularly as in the main they concern HMRC's administrative processes and as a result changes could be made without any need for legislation.

    58.1. HMRC to consider setting a timescale in which it commits to responding to applications for treaty clearance so that once a claim is submitted the parties can predict the latest date by which they would have heard back (both in relation to Directions and also repayment claims). This could be based on the approach taken to non-statutory clearances where HMRC commit, within a particular timeframe, to reply or to ask for further information. (In this context we note the steps being taken by the EU to expedite withholding tax claims under the EU FASTER Directive, including a maximum 60-day period for refund claims to come into effect no later than 2030, which the Commission states will help boost cross-border investment.)

58.2. Review and possibly revise the conditions included in standard treaty directions to provide better clarity and thus certainty as to when a treaty direction expires. In addition, HMRC to publishing guidance, possibly by way of fact sheet, addressing common issues that can cause a Direction to cease to be of effect which should be sent to borrowers accompanying a Direction to alert them what to watch out for.

58.3. Review the DTTP scheme concerning making payments on a first interest payment date. In particular, HMRC to consider whether it would be possible for a borrower to rely on a DTTP Passport in relation to the first interest payment date if no Direction has been received (as the current practice, whilst helpful, does not eliminate a borrower's risk should HMRC then decline to apply the passport to a particular loan).

58.4. Amend the DTTP register to include each of a passport's start date, expiry date and any renewal date. Whilst the DTTP guidance states that a lender can generally expect a DTTP Passport to be renewed and that a borrower can continue to rely on a Direction even when the lender's passport is withdrawn (until informed otherwise by HMRC) our members consider it would be helpful to be able to confirm, via the register, that a passport remains valid. The addition of such information is also relevant should, as we referenced above, the DTTP scheme be retained as part of the self-assessment system,

58.5. Where a Direction is issued with an expiry date (as opposed to being a "whole of life" of the loan direction), HMRC to explore whether it would be possible for its system to auto-generate reminders to be sent to borrowers if there is a need for renewal.

58.6. Reviewing the experience of QPP exemption in practice after 10 years, with a view to working with stakeholders on updating guidance in light of that experience (anecdotally we understand that uncertainties about its application impacts the willingness of parties to rely on it, and so instead they continue to make applications for a Direction).

58.7. Clarifying the status of HMRC's concessionary treatment currently, whilst it is paused, and providing a timeline for when "policy" is expected to be finalised. It would also be helpful if HMRC could confirm how they intend to progress the disclosures made during the "pause' which we understand are not currently being dealt with (taking into account that the pause does not just effect the position of the borrower vis-à-vis HMRC but also has an impact on the borrower's relationship with lender (who potentially may no longer be a lender at the time any disclosures are resolved). A particular issue here relates to the application of the 4-year time limit for repayment claims by a lender - which can only be made should withholding have been deducted.

QUESTIONS

Question 1	To what extent do the current processes for obtaining treaty relief on interest create delays, costs, or administrative burdens? Which specific aspects cause the most difficulty? Please provide examples or evidence where possible Response: There are a numbers of issues that can arise under the current process for obtaining treaty clearance. First, there can be delays in the ability to obtain treaty clearance because of the need to obtain a certificate of residence from the lenders's home jurisdiction (although the DTTP scheme can mitigate this where a lender has a DTTP Passport at the time the loan is made). Secondly, there is uncertainty as to how long HMRC will take to issue a Direction meaning that there is risk that the fist interest payment (at least) has to be made subject to WHT, with cashflow implications either for the lender (as they receive a net payment and have to make a treaty repayment claims) or the borrower (because they have to gross up the lender and then are dependent on the lender taking the appropriate action to obtain repayment from HMRC and then reimbursing the borrower - assuming it is in time to do so). Particularly on syndicated loans, there are costs (in terms of time and fees) in submitting the relevant forms for each relevant lender (both at outset, and on any change in lenders and/or if a Direction needs to be renewed). The standard conditions included in treaty directions are broadly drafted and so can cause mistakes to be made as to when they triggered (rendering a Direction invalid and necessitating a further application). As we assume HMRC will be aware from disclosures made under their concessionary treatment some of these issues can result in a borrower making an inadvertent mistake leading to it paying interest gross when it is not entitled to do so, even though the lender is eligible for treaty relief. The making of such mistakes, particularly where identified "after the event" as part of a due diligence exercise on a potential sale of the borrower, can give rise to costs (and potentially transaction delays) whilst the

	"risk" and its impact is quantified. Whilst we note discussion of HMRC's concessionary treatment is outside the scope of this consultation, HMRC's current pausing, and lack of timeline as to when HMRC will have concluded its review, of it is itself creating difficulties where mistakes have been made.

Question 2	**How well does the current process for obtaining directions in advance of payments of interest allow easy and certain access to treaty relief?** **Response: Whilst the current process provides certainty as to entitlement to treaty relief, it is administratively cumbersome. Further, the nature of the conditions attached to the "standard" treaty direction issued by HMRC (and the immediate cessation of the direction should any of those conditions be breached) risks borrowers mistakenly continuing to pay gross under a direction that is no longer in effect.** **See further paragraphs 1 to 9 above.**
Question 3	**Should UK payers of interest to lenders in jurisdictions with whom the UK have a double taxation agreement be permitted to apply treaty relief on interest payments without prior HMRC clearance? What would be the benefits and risks of this?** **Response: We note that UK payers are already permitted to apply treaty relief on interest payments without prior HMRC clearance where the qualifying private placement exemption in s888A ITA 2007 applies. In principle, we see no reason why the same type of approach, based on self-assessment, should not apply more generally - provided sufficient safeguards are built in to minimise the risk for the payer in the event that it is subsequently established that treaty relief should not have applied to the payment.** **Given that potentially significant amounts of income tax could be in issue, payers need certainty that if they comply with their statutory obligations in relation to any new self-assessment process they will not be at risk should it subsequently transpire that the lender was not eligible for treaty relief. The current process, involving the provision of a Direction from HMRC, provides such certainty - which is needed not just in the context of compliance by the parties**

	complying with their tax obligations but also in the context of commercial allocation of risk in relation to withholding tax in loan agreements. **See further paragraphs 10 to 21 above.**

Question 4	**How would moving to self-assessment of treaty relief benefit your business (such as time saved, reduction of fees, cash-flow improvements, greater certainty)?** **Response: As a general matter, moving to a self-assessment system would mean that the ability to pay gross could be determined at the outset of a loan, as opposed to the delays inherent in the current system (given the need to potentially involve two tax authorities in any application for treaty relief).** **It would as a result, have cashflow benefits - for lenders, ensuring that initial interest payments can be paid gross where treaty relief is available and for borrowers, avoiding the additional cost of a gross-up should there be a delay in HMRC processing an application for a treaty direction (which can sometimes take several months).** **It may also have the benefit of simplifying standard form provisions in market loan documentation (although this would depend on the precise form of the self-assessment process). In relation to third party loans (particularly in the syndicated loan market) it should also save time in terms of the need to submit (and follow up) on multiple applications for Directions to HMRC (i) on entering into the loan (ii) as and when a Direction expires and (iii) each time there is a change in lender.** **Finally, a simple straightforward system should have the benefit of preventing some of the mistakes that HMRC will be aware of from disclosures made in connection with their concessionary treatment (with resultant cost and time savings to those, including HMRC, involved in dealing with such disclosures).**

Question 5	**Do you have a view on how interest payers would satisfy themselves that all the requirements for treaty relief are met before applying treaty relief to payments? What experience do you have in other jurisdictions where self-assessment of treaty relief is possible? How well does this work?** **Response: Fundamentally, entitlement to treaty relief is something that a recipient of the interest payment is best placed to determine - given the relevance of their residence status, whether or not they are "beneficially entitled" to the relevant payment, and their general eligibility for treaty relief taking into account their legal status. As is the case under the QPP exemption, we consider that any system based on self-assessment should require the lender to confirm to the payer its treaty entitlement (given that entitlement depends on matters within its knowledge), with one option being for the lender to provide the borrower with details of any Passport it holds as part of that conformation (as that passport evidences HMRC having accepted that lender's general treaty eligibility, albeit not in the context of a specific lending arrangement).** **The payer would be entitled to rely on that confirmation as part of the process.** **See further paragraphs 10 to 17 above.**

Question 6	**Should self-assessment of treaty relief only be available where the risk of base erosion is low because the payer is subject to other effective restrictions on interest deductibility? If so, what would be a good basis for a threshold (such as being subject to transfer pricing rules, having net finance costs exceeding the de minimis for Corporate Interest Restriction, being subject to Pillar 2, or some combination of these)?** **Response: No. It is important that the same self-assessment process applies to all payments, [at least where the parties to a loan are unconnected]. As a general rule, the nature and scope of the provisions referenced in the question (transfer pricing, CIR and Pillar 2 - all of which have been either enacted or strengthened in the last 20 years), together with the distribution rules, safeguard against base erosion - such that the role of a claim for treaty relief as "advance warning" of potential profit shifting would appear to have less significance than in the past. To the extent that the Exchequer has particular situations in mind where it considers there is a potential (and probable) risk of base erosion, we recommend that this is addressed in any reporting requirements (which would enable HMRC systems to identify arrangements where further enquiry may be merited). However, we acknowledge that there may be fact-patterns where, based on past data and experience, there are legitimate reasons for HMRC to retain an approval right over treaty entitlement: if this is the case, any exclusions should be clear and based on factual conditions so a payer can easily determine where self-assessment is not available.** **See further paragraphs 22 to 27 above.**

Question 7	**Would it be necessary or helpful to introduce a facility for interest-payers to obtain certainty in advance of paying interest that HMRC agrees treaty relief is available? How might such a facility work? Are you aware of other jurisdictions providing such a facility?** **Response: We are not able to comment on the position in other jurisdictions. However in general we do not consider that it would be helpful to introduce such a facility.** **See further paragraphs 19 and 20 above.**
Question 8	**Are there other jurisdictions you have experience of where the administrative burden to obtain treaty relief is low, but the regime still provides effective protection against base erosion using interest? What are the requirements in such jurisdictions when paying cross-border interest? How is protection against base erosion achieved (particularly for owner- managed businesses)?** **Response: We are not able to comment on the position in other jurisdictions.**

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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.** **Response: We note that the risks highlighted in the consultation as potentially arising from these changes concerns base erosion/profit shifting by use of debt (rather than equity). The other risk, not referenced in the consultation, is that a lender that is not treaty eligible is self-assessed as being entitled to treaty relief and so receives interest gross when WHT should have applied.** **Whilst we are not in a position to comment on the likelihood of either of these risks materialising, we would note that both risks can be mitigated - whether as a result of the application of various corporation tax regimes directed at combatting base erosion and/or through the adoption of a reporting regime that enables HMRC to identify potential risks early.** **In addition, we would anticipate that the practical impact of these changes will be most felt in the commercial (third party) lending market where these risks are likely to be low in any event. In this context, we have suggested that HMRC retain the DTPP scheme - which will ensure that, for lenders with a DTTP Passport, sanctions are available to HMRC under that regime as a further deterrence to non-compliance.** **However, if, based on evidence from their compliance experience, HMRC consider that there are particular scenarios where self-assessment should not apply given the potential for base erosion (notwithstanding these mitigants), one option would be to exclude such scenarios from being able to access self-assessment, However, if this were to be done, any excisions should be clearly, and factually, defined so borrowers can have certainty as to when self-assessment is not available.** **See further paragraphs 22 to 27 above.**

Question 10	**What reporting requirements are imposed in other jurisdictions in which you have significant operations/investments?** **Response: We are not able to comment on the position in other jurisdictions.**
Question 11	**Would it be significantly burdensome to report payments made with complete relief (so that no UK tax is due) in the CT61, alongside payments made without relief or with partial relief? Would it be preferable instead to report them alongside treaty rated cross-border royalty payments in the CT600H? Why?** **Response: We consider that once the parameters of any new self-assessment system have been determined, HMRC should consult with stakeholders on a new standalone reporting system that does not place disproportionate burdens on payers. In particular, in common with the approach being taken in relation to International Controlled Transactions reporting should be on an annual basis.** **See further paragraphs 28 to 36 above.**
Question 12	**What sanctions are imposed in other jurisdictions in which you have significant operations/investments?** **Response: We are not able to comment on the position in other jurisdictions.**

Question 13	**What would be a proportionate but effective set of sanctions for non-compliance in this area? How should this apply in the following circumstances?** • **where treaty relief is applied but the conditions for relief being available are not met** • **where treaty relief is applied, the conditions for relief are met, but there has been a failure to comply with any requirement in advance of the payment (such as to obtain a certificate of residence or creditor certificate)** • **where treaty relief is applied, the conditions are met, but there has been a failure to comply with reporting requirements after the payment** **Response: We welcome the Consultation's acknowledgement that sanctions must be proportionate to the nature of the non-compliance and in particular agree that a distinction needs to be made between circumstances where treaty relief is available (such that there is no loss of UK tax revenue to the Exchequer) and where treaty relief is applied incorrectly.** **We also consider that any sanctions regime should take account of the fact that, notwithstanding that the obligation to withhold is a stand-alone obligation imposed on the payer, in substance the liability to tax on the relevant income is that of the lender - with the payer in effect collecting that tax for HMRC at source. As a result we do not consider tax-geared penalties are appropriate in this context.** **Further where treaty relief is available, we consider any sanctions should be in the form of a fixed sum penalty only given there is no loss to the Exchequer. We recognise that, as any sanctions system should operate to encourage "improved" compliance and so recognise that there may be a basis for a model that results in an increased penalty amount being chargeable should the relevant non-compliance behaviour repeat.** **See further paragraphs 37 to 51 above.**

Question 14	**Are there any other options or ideas for simplifying the withholding process on interest that you believe the government should consider? This could include international examples not mentioned above, or innovative uses of technology or data sharing.** **Response: In paragraph 58 we set out possible changes that could be made to the current system which could help borrowers. We would also bring to HMRC's attention the intended approach to withholding matters reflected in the EU FASTER Payments Directive - particularly given that many of the treaty claims seen by HMRC are likely to be in relation to residents of EU states,**
Question 15	**Do you have any other comments in relation to changes which could be made to the current system for withholding on payments of interest and how these would impact (positively or negatively) to your/your clients' organisation? This may be in the form of time saved per transaction, reduction in fees, cash-flow.** **Response: We set out various suggestions in paragraph 58 above. We consider that a number of these can be taken forward independently of this Consultation, particularly as in the main they concern HMRC's administrative processes and as a result changes can be made without any need for legislation.**