

ClientAlert

Tax

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A new UK withholding tax exemption for privately placed debt

The Chancellor of the UK Exchequer, George Osborne, announced in the 2014 Autumn Statement on Wednesday a new targeted exemption from UK withholding tax for interest on qualifying privately placed debt. The exemption is a welcome addition to the raft of tax measures introduced by the UK Government since the announcement in 2010 of its long-term economic plan to boost British business.

White & Case has advised HM Treasury (on a “no fee” basis) on the Government’s proposal and our tax practice in London has worked closely with HM Treasury and HM Revenue & Customs to design and craft the new relief, which is expected to be subject to public consultation over the coming months.

UK withholding tax (currently at a rate of 20%) applies to payments of yearly interest arising in the UK, with exception under UK rules for certain payments to UK banks, UK corporates and in relation to interest paid on “quoted Eurobonds” (that is, securities issued by a company, carrying a right to interest and listed on a recognised stock exchange). Relief is also available under double tax treaty to reduce or eliminate the charge, subject to the completion of procedural formalities. Strictly speaking, withholding tax is a tax on a lender’s income; however it is rare that a lender would agree to bear such a cost and in practice both lenders and borrowers enter into financing arrangements on the basis that no UK withholding tax will apply (whether by application of domestic rules or treaty). Where UK withholding tax is imposed, the cost would ordinarily ultimately be borne by the borrower, whether as a result of contractual cost allocation or a cost component of funding.

In the international arena, lenders will usually either invest in quoted Eurobonds or ensure that they are well positioned to avail of treaty reliefs in order to obtain UK source interest free of UK withholding tax. The obtaining of treaty benefits in the UK, however, is subject to compliance with procedural formalities and this can be a significant administrative burden. The listing of bonds is costly and requires significant ongoing compliance and is therefore not a viable option for many prospective borrowers, especially small and medium enterprises for whom access to finance is arguably most crucial.



Peita Menon
Partner, London
+ 44 20 7532 2107
pmenon@whitecase.com

Prabhu Narasimhan
Counsel, London
+ 44 20 7532 2174
pnarasimhan@whitecase.com

Laura Hoyland
Associate, London
+ 44 20 7532 2215
lhoyland@whitecase.com

The new withholding tax exemption is therefore targeted broadly at long term unlisted debt. The definition of “private placement” will need to be watched closely. Restrictions can be expected to be placed on the categories of issuers and investors that may benefit from the exemption, as well as on the qualifying security itself and the loan relationship represented by that security.

White & Case will continue to work closely with HM Treasury and HM Revenue & Customs throughout the expected consultation process and until enactment of the relief which is likely to be during the course of 2015 and which should place eligible UK borrowers on the same platform as borrowers in many other EU countries whose domestic tax rules provide an exemption from withholding tax on interest payments altogether.

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