

ClientAlert

Tax

25 March 2015

Private placements: a new UK withholding tax exemption

The Finance (No.2) Bill 2015 contains provisions for an exemption from the obligation to deduct UK income tax from yearly interest paid on “qualifying private placements”.

This measure was first announced on 3 December in the Chancellor’s Autumn Statement 2014 and draft legislation for consultation was published a week later on 10 December 2014. The policy objective behind this provision, as announced by the UK Government in December 2014, is that the development of the private placement market will provide a new source of financing for mid-size businesses and infrastructure projects. The introduction of an exemption from the obligation to withhold income tax on yearly interest paid on such instruments removes an obstacle to the development of a market for UK-based private placements. The exemption is therefore 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.

The exemption contained in Finance (No.2) Bill 2015 applies to payments of interest on a “qualifying private placement”. A qualifying private placement is defined in the Finance (No.2) Bill 2015 as a security which represents a loan relationship to which a company is a party as debtor, which is not listed on a recognised stock exchange and in relation to which such other conditions as the Treasury may specify by regulations are met.

This represents a relaxation of certain conditions in the draft primary legislation originally released for consultation in December 2014 and which previously required the security in question to be “issued” by a company and, further, required the loan relationship represented by the security not to provide for its termination within three years of its coming into force (meaning that mandatory and optional redemption clauses and their equivalents should no longer prevent interest on a private placement from being eligible for the new exemption). It is understood that HM Revenue & Customs consider the meaning of the word “security” as contained in the Finance (No.2) Bill 2015 to be relatively wide and that HM Revenue & Customs do not consider that “security” precludes application of the new exemption in relation to loan-type arrangements for which standardised documentation is being prepared in the market.

The other change to note is that the regulations which may be made under the primary legislation and which may prescribe further conditions for the relief may now extend to conditions relating to the person by or through whom a payment of interest on the security is made. (The other further conditions which may be contained in regulations relate to the security itself, the loan relationship represented by the security, the terms on which the security is entered into, the borrowing company and the investor.)



Peita Menon

Partner, London

+ 44 20 7532 2107

pmenon@whitecase.com

Prabhu Narasimhan

Partner, London

+ 44 20 7532 2174

pnrarasimhan@whitecase.com

Laura Hoyland

Associate, London

+ 44 20 7532 2215

laura.hoyland@whitecase.com

White & Case LLP
5 Old Broad Street
London EC2N 1DW
+ 44 20 7532 1000

On the basis that the Finance (No.2) Bill 2015 receives Royal Assent in its current form, the exemption from the obligation to deduct UK income tax from payments of interest on a qualifying private placement will apply from a date to be set by HM Treasury in regulations.

This Client Alert is provided for your convenience and does not constitute legal advice. It is prepared for the general information of our clients and other interested persons. This Client Alert should not be acted upon in any specific situation without appropriate legal advice and it may include links to websites other than the White & Case website.

White & Case has no responsibility for any websites other than its own and does not endorse the information, content, presentation or accuracy, or make any warranty, express or implied, regarding any other website.

This Client Alert is protected by copyright. Material appearing herein may be reproduced or translated with appropriate credit.