ICMA
International
Capital
Market
Association

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Room 3C/06
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London
SW1A 2BQ

(Submitted by email to mark.lafone@hmrc.gsi.gov.uk)

12 June 2017

Dear Sirs,

Withholding Tax Exemption for Debt Traded on a Multilateral Trading Facility – Consultation document dated 20 March 2017

The International Capital Market Association (ICMA) is responding to the questions in Section 5 of the above Consultation documentation.

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 debt securities issues throughout Europe. This constituency deliberates principally through ICMA's Primary Market Practices Committee[1], which gathers the heads and senior members of the syndicate desks of 51 ICMA member banks, and ICMA's Legal and Documentation Committee[2], 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 in the Annex to this letter and would be pleased to discuss it with you at your convenience.

Yours faithfully,

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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

RESPONSE TO SECTION 5:

Q1. Comments are invited on the impact and effectiveness of all aspects of the proposal and the extent to which it will achieve the policy objectives described in Chapter 3. If you consider there is any reason why it would not, please explain why not. We welcome suggestions as to how the proposal might better match the policy objectives.

1. Extending the quoted Eurobond exemption (QEE) to cover debt traded on wholesale UK MTFs could contribute to the competitiveness of UK wholesale primary debt markets.

2. Increasing listing options, and therefore flexibility, for debt issuers can help to make debt markets more efficient and is to be encouraged. The London Stock Exchange Group's announcement that it will launch a new MTF for debt securities (the International Securities Market)[3] in Q2 2017 and the proposal by the FCA in relation to a new wholesale bond MTF is therefore positive.

3. Any new London MTF would need to allow securities listed on it to benefit from the QEE to be a viable option for UK issuers, because UK issuers benefit from the QEE when listing debt securities on non-UK stock exchanges.

Q2. Do you agree that exemption from withholding tax is a key element in encouraging the development of MTFs in the UK? To what extent are there other factors which would continue to impede it?

4. As mentioned in our response to Q2 above, any new UK MTF would need to allow securities listed on it to benefit from the QEE to be a viable option for UK issuers.

5. In addition, it will be important that the listing of debt securities on any new UK MTF would not entail the imposition of UK withholding tax on payments made to international investors. Such investors require payments of interest on bonds issued in international markets to be made free and clear of any withholding tax by the issuer and its agents. If bonds were to pay interest net of withholding tax this would represent, as a minimum, a timing cost for investors. If the investor could claim a repayment of the withholding tax, or credit against its tax liabilities, this would take time. If repayment or credit was not available to an investor, any withholding tax would be an absolute cost for that investor, which could render its decision to invest uneconomic. It follows, therefore, that the imposition of any withholding tax on international debt securities would act as a serious disincentive to investors.

6. As presently drafted in section 987 of the Income Tax Act 2007, the QEE does not currently extend to securities issued by local authorities. Amending the wording to clarify that a security issued by a company or ***local authority*** could benefit from the QEE would be helpful and remove a barrier preventing local authorities from listing in the UK.

[3] http://www.londonstockexchange.com/companies-and-advisors/international/securities/market.htm

Q3. As noted in paragraph 3.4, comments are invited on anticipated behavioural effects of the proposed change on the issuance of debt. In particular, to what extent would you expect issuances and trading to take place on any new UK MTFs which would otherwise have taken place on overseas venues in order to access the QEE?

7. The proposed exemption from withholding tax for debt traded on a UK MTF will remove a barrier and may result in increased use of UK MTFs by UK issuers. Also see point 6. above.

Q4. The proposal could be achieved by widening the existing QEE or by providing a stand-alone exemption. Is there any commercial reason to prefer either of these over the other?

8. We have a marginal preference for widening the existing QEE as it may make the legislation easier to follow. The sooner this legislative change takes effect, the sooner UK MTFs may benefit.

Q5. Do you have any comments on the assessment of equality and other impacts in the summary of impacts on page 10?

9. We note the statements in the summary of impacts and, as mentioned above, agree that this measure will remove a barrier to the development of UK debt markets.