



Income tax: deduction at source from interest paid on private placements

Who is likely to be affected?

Companies that make payments of yearly interest on a form of unlisted debt instrument known as a private placement.

General description of the measure

This measure will provide an exception from the obligation to deduct income tax from yearly interest paid on private placements which meet certain conditions. Such instruments will be known as 'qualifying private placements'.

Policy objective

The development of the private placement market will provide a new source of financing for mid-size businesses and infrastructure projects. It removes an obstacle to the development of a market for UK-based private placements by introducing an exemption from the obligation to deduct income tax from interest paid on such instruments. The measure will incorporate appropriate safeguards to ensure the exemption from withholding tax obligations in such cases is not abused. It supports the Government's objective of making the tax system more competitive.

Background to the measure

This measure was announced at Autumn Statement 2014.

Detailed proposal

Operative date

The primary legislation for this measure will have effect on or after the date of Royal Assent to Finance Bill 2015. Regulations made under the power provided in this primary legislation will come into force on the date specified in the regulations.

Current law

Part 15 of the Income Tax Act 2007 (ITA) sets out the rules that require deduction of income tax at source from certain types of payment. The rules on the deduction of income tax from payments of yearly interest arising in the UK, including certain exceptions from this obligation, are set out in Chapter 3 of Part 15 ITA.

Proposed revisions

Legislation will be introduced in Finance Bill 2015 to amend Chapter 3 of Part 15 ITA to include an exception from the duty to deduct income tax from qualifying private placements. The legislation will set out certain gateway conditions, including requirements that the instrument must represent a loan relationship of a company, be issued for a minimum period of three years, and not be listed on a recognised stock exchange. In addition to setting out these key conditions, the primary legislation will allow for further conditions to be set out in regulations, in relation to the security itself and the terms and conditions of its issuance, and in relation to the issuer and holder of the security.

Detailed regulations made under this power will be developed in consultation with stakeholders following publication of the primary legislation. Draft regulations may provide for the issuers and holders of such instruments to be limited to certain types of entity, and for the issuances to be restricted to a certain size. The regulations will include anti-avoidance provisions to apply where the security is held for an unallowable purpose, and will set out the consequences of having paid interest gross in circumstances where the exception should not have applied. A Technical Note on draft regulations was published on 10 December 2014.

Summary of impacts

Exchequer impact (£m)	2014-15	2015-16	2016-17	2017-18	2018-19	2019-20
	-	negligible	negligible	negligible	negligible	negligible
	This measure is expected to have a negligible impact on the Exchequer.					
Economic impact	The measure is expected to stimulate the use of private placements as a source of finance for medium sized businesses and infrastructure projects.					
Impact on individuals, households and families	The proposed changes will apply only to companies. The measure will have no impact on individuals, or on family formation, stability or breakdown.					
Equalities impacts	This measure applies only to companies and will not impact on any equality group.					
Impact on business including civil society organisations	This measure will facilitate the growth of private placements as a source of finance for business. It will affect only a small number of companies but will remove an obstacle to the growth of the private placement market. It will not impose any new administrative burdens on business.					
Operational impact (£m) (HMRC or other)	It is not anticipated that implementing this change will incur any additional costs for HM Revenue & Customs (HMRC).					
Other impacts	Other impacts have been considered and none have been identified.					

Monitoring and evaluation

HMRC will monitor the impact of this measure through engagement with stakeholders.

Further advice

If you have any questions about this change, please contact Tony Sadler on 03000 585479 (email: tony.sadler@hmrc.gsi.gov.uk) or contact Mark Lafone on 03000 585613 (email: mark.lafone@hmrc.gsi.gov.uk).

1 Exceptions from duty to deduct tax: qualifying private placements

- (1) In Chapter 3 of Part 15 of ITA 2007 (deduction of tax from certain payments of yearly interest), after section 888 insert –

“888A Qualifying private placements

- (1) The duty to deduct a sum representing income tax under section 874 does not apply to a payment of interest on a qualifying private placement.
 - (2) “Qualifying private placement” means a security –
 - (a) which meets Conditions A, B and C, and
 - (b) in relation to which such other conditions as the Treasury may specify by regulations are met.
 - (3) Condition A is that the security –
 - (a) is issued by a company, and
 - (b) represents a loan relationship to which the company is a party as debtor.
 - (4) Condition B is that the terms of the loan relationship represented by the security do not provide for the loan relationship to terminate within 3 years of its coming into force.
 - (5) Condition C is that the security is not listed on a recognised stock exchange.
 - (6) The conditions which may be specified under subsection (2)(b) include conditions relating to –
 - (a) the security itself,
 - (b) the loan relationship represented by the security,
 - (c) the terms or circumstances of the issue of the security,
 - (d) the issuer of the security, or
 - (e) the holder of the security.
 - (7) Regulations under this section may make provision about the consequences of failing to make a deduction under section 874, in respect of a payment of interest on a security, in cases where –
 - (a) the person required to make the deduction had a reasonable, but mistaken, belief that the security was a qualifying private placement, or
 - (b) the loan relationship represented by the security terminates within 3 years of the loan relationship coming into force.
 - (8) Regulations under this section may –
 - (a) make different provision for different cases;
 - (b) contain incidental, supplemental, consequential and transitional provision and savings.
 - (9) In this section “loan relationship” has the same meaning as in Part 5 of CTA 2009.”
- (2) Any power conferred on the Treasury by virtue of subsection (1) to make regulations comes into force on the day on which this Act is passed.

- (3) So far as not already brought into force by subsection (2), the amendment made by this section comes into force on such day as the Treasury may by regulations appoint.
- (4) Section 1014(4) of ITA 2007 (regulations etc subject to annulment) does not apply to regulations under subsection (3).

EXPLANATORY NOTE

EXCEPTION FROM DUTY TO DEDUCT TAX: QUALIFYING PRIVATE PLACEMENTS

SUMMARY

1. Clause [X] amends the rules on the deduction of income tax from payments of yearly interest. It provides for an exception from the duty to deduct income tax for interest paid on qualifying private placements.

DETAILS OF THE CLAUSE

2. Subsection (1) of the clause inserts a new section 888A into Chapter 3 of Part 15 of the Income Tax Act 2007 (ITA).
3. Subsection (1) of new section 888A provides that the duty to deduct income tax from yearly interest does not apply to a ‘qualifying private placement’. This is defined in subsection (2) as a security which meets Conditions A to C, and such other conditions as are set in regulations. Conditions A to C are set out in subsections (3) to (5).
4. Condition A is that the security must be issued by a company and represent a debtor loan relationship of the company. Subsection (9) provides that ‘loan relationship’ takes its meaning from Part 5 of the Corporation Tax Act 2009.
5. Condition B is that the security must have a minimum term of three years.
6. Condition C is that the security is not listed on a recognised stock exchange.
7. Subsections (6) to (8) of new section 888A set out the provisions that apply to regulations made under this section. They provide, among other matters, that the regulations may set out conditions relating to the security itself, the issuer and the holder of the security, the consequences where a security ceases to be a qualifying private placement, and to transitional and similar cases.
8. Subsection (2) to (4) of the clause set out the commencement provisions. The power to make regulations under the new section 888A comes into force on the date of Royal Assent to Finance Bill 2015. The exemption from the duty to deduct income tax will apply from a date to be set in regulations.

BACKGROUND NOTE

9. Private placements are a form of unlisted debt instrument. The *Breedon Report* of March 2012 recommended increasing the number of UK-based private placements investors in order to unlock a new source of financing for mid-sized borrowers.

10. Where a UK company pays yearly interest on borrowings, tax rules require the company to deduct income tax from the payment. However, there are a number of exemptions from this requirement, and where the borrowing is from a non-UK lender, double taxation treaties commonly allow interest to be paid gross or at a reduced rate of withholding. This measure aims to remove an obstacle to the development of the UK private placement market by providing a specific exemption for private placements that meet certain qualifying conditions.

11. The power to make regulations provided in this measure allows detailed conditions to be set out in relation to private placements that qualify for the exemption from the duty to deduct income tax from interest payments. These regulations may allow the exemption to be targeted at particular types of company, and may contain safeguards to ensure the exemption is not abused.

12. If you have any questions about this change, or comments on the legislation, please contact Tony Sadler on 03000 585479 (email: tony.sadler@hmrc.gsi.gov.uk).