HM Revenue
& Customs

Double Taxation Treaty Passport scheme review

Consultation document
Publication date: 26 May 2016
Closing date for comments: 12 August 2016

Subject of this consultation:	This is a consultation on renewing and extending the scope of the Double Taxation Treaty Passport (DTTP) scheme.
Scope of this consultation:	DTTP was introduced as an administrative simplification in late 2010. It is available to corporate-to-corporate lending into the UK in order to reduce the burden of accessing reduced rates of withholding tax (WHT) under the relevant tax treaties. This consultation will enable HMRC to review the scheme to ensure that it still meets the needs of UK borrowers and foreign investors. It also seeks views on extending the scope of the DTTP scheme to investors entitled to sovereign immunity from UK tax ("sovereign investors"), pension funds and other entities.
Who should read this:	We would like to hear from inward investors into the UK and their UK borrowers. Specifically, we would like to hear from the representatives of sovereign investors and pension funds as well as professional tax advisors more generally.
Duration:	26 May 2016 – 12 August 2016
Lead official:	Johnston Orr, HM Revenue and Customs
How to respond or enquire about this consultation:	Responses or enquiries should be made: • By post to: Johnston Orr, HMRC, CTIS Business International, Portcullis House, 21 India Street, Glasgow G2 4PZ • By e-mail to: treatypassport.consultation@hmrc.gsi.gov.uk Please note that the mailbox will not accept e-mails larger than 10Mb. Representative groups may wish to give a summary of the people and organisations they represent and, where relevant, how they consulted in reaching their views. You may wish to include contact details for follow-up (e.g. name, phone number, email address).
Additional ways to be involved:	Although this is a largely technical issue where much of the review will be based on written submissions, HMRC welcomes engagement with industry representatives who would be affected by the issues under discussion and will be holding meetings to discuss these proposals. If you would like to arrange a meeting with HMRC, please use the email contact address given above.
After the consultation:	A response document will be published within 12 weeks of the consultation closing, and the DTTP scheme will then be revised (which may include renewal and extension in scope).
Getting to this stage:	The DTTP scheme was introduced in September 2010 and has been operating since then.
Previous engagement:	This is the first consultation on this topic.

Contents

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1. Introduction

Background – Withholding Tax

1.1 Borrowers in the UK are obliged by section 874 of Income Tax Act 2007 (ITA 2007) to withhold income tax at the basic rate (currently 20%) on payments of annual interest to overseas lenders (broadly, interest on loans of over a year in duration). This collection mechanism is sometimes referred to as withholding tax (WHT).

1.2 If the lender is resident in a territory with which the UK has a tax treaty, the UK payer of interest may be entitled to deduct tax (WHT) at a lower rate, or not to deduct WHT at all, depending on what the treaty specifies. The OECD Model Treaty, on which many treaties are based, covers this in Article 11: Interest.

1.3 Where such treaty benefits apply, Regulation 2 of SI1970/488 allows HMRC to direct, by means of a notice, the UK payer to pay the interest at the lower rate of WHT (or without deduction of WHT) to the non-resident lender who is beneficially entitled to the income.

1.4 This process can be cumbersome for overseas lenders, as a Direction needs to be issued for each loan, and in each case HMRC requires the overseas lender to obtain proof of their residence for tax purposes from their own fiscal authority. This is known as the "certified claim" method. If an overseas lender makes multiple loans to the UK it needs to go through this process each time before HMRC will issue a Direction to each borrower in the UK. Thus even where WHT can be wholly or partly relieved, this administrative burden can act as a barrier to overseas investors making investments in the UK by means of debt finance.

Reducing the administrative burden

1.5 In 2007/2008 HMRC reviewed the process in order to reduce the administrative burden, provide business with certainty and avoid legislative change whilst minimising information gaps for compliance purposes. As a result, the Double Taxation Treaty Passport (DTTP) scheme was introduced in September 2010 after consultation. DTTP applies to connected (e.g. intra-group) and unconnected (third party) loans. It is an administrative simplification.

1.6 The scheme is detailed on the GOV.UK website at https://www.gov.uk/guidance/double-taxation-treaty-passport-scheme

1.7 The DTTP scheme is currently available to corporate bodies only. The overseas corporate lender applies for a treaty passport under the scheme and, once granted, this passport can be used to make multiple loans to UK borrowers. Thus the lender does not need to apply to their own tax authority and HMRC in connection with every loan. The prospective borrowers in the UK consult an online database of passported lenders to check that a valid passport exists and, prior to making the first interest payment, the UK borrower notifies HMRC of the lending/borrowing relationship by submitting Form DTTP2. HMRC then issues a Direction to the UK borrower to pay the interest without WHT or at a lower rate of WHT, as specified in the relevant tax treaty.

1.8 Passport holders need to apply for renewal of their passports after 5 years. A passport is cancelled if no reply is received to the renewal correspondence from HMRC.

1.9 Non-DTTP situations continue to operate via the “certified claim” method, as described above at (1.5).

1.10 Around 3,000 passports have been issued in the 5 years since the scheme commenced.

1.11 Another recently introduced provision that reduces the circumstances in which WHT applies and provides administrative simplification is the private placements legislation. Section 23 of Finance Act 2015 introduced section 888A ITA 2007 and SI 2015/2002, which covers relevant securities between unconnected parties where the value is £10m+ and of less than 50 years duration. Dependent upon the territory in which the lender is resident, the borrower can self-assess that no WHT need be paid. Again, this is a simplification for persons who would, in most cases, already qualify for relief.

Scope of consultation

1.12 This consultation seeks views on the DTTP scheme to ensure that it still meets the needs of UK borrowers and foreign investors, and on its possible expansion beyond corporate to corporate lending, to encompass funds and partnerships.

1.13 This consultation does not intend to initiate legislative change. It is concerned with administrative simplification only.

1.14 As a purely administrative simplification, any measures resulting from this consultation should be revenue neutral.

1.15 This consultation does not cover relief from WHT under the EU Interest & Royalties Directive which is covered by specific UK legislation dictating its operation and time limits. Payments under the Directive do not require the DTTP scheme, as highlighted by Question 22 of Double Taxation Treaty Passport Scheme: Technical Questions and Answers (see Annex D), which specifically states that the Treaty Passport Scheme and EU Directive “systems are and should remain separate, not least to avoid any need for legislative changes”.

2. Renewing and extending the DTTP scheme

Renewing the scheme

2.1 The current DTTP scheme has been running since September 2010 and works as follows:

- The overseas corporate lender applies for a passport from HMRC using Form DTTP1 (see Annex A).
- An applicant must agree to abide by the DTTP scheme Terms & Conditions (see Annex B).
- On the passport being granted, the passport holder is entered into an online publicly available register with a unique DTTP number - https://www.gov.uk/government/publications/double-taxation-treaty-passport-scheme-register
- The register can then be consulted by a prospective borrower to verify passport holder status. On entering into a loan with a passported lender, the UK borrower informs HMRC at least 30 working days before the first interest payment is due using form DTTP2 (see Annex C).
- HMRC uses the notification details from DTTP2 to issue a Direction to the borrower to pay the interest gross or at the reduced rate of WHT (as specified in the relevant treaty).

2.2 HMRC is now reviewing whether the scheme has been effective in reducing the administrative burden on investors of debt into the UK and their UK borrowers, and whether it still meets the needs of UK borrowers and foreign investors.

Question 1
Is the current DTTP scheme meeting its objective of providing an administrative simplification for corporate-to-corporate lending and should it be continued? The alternative would be to return to the “certified claim” approach for each loan (see 1.5).

Question 2
Do the current DTTP arrangements create any barriers to the making of debt-based investments in the UK?

Treaty Passport renewal process

2.3 Treaty passports are currently granted for 5 years, then renewed (as described above at 0). The effectiveness of the passport renewal process is being reviewed as part of this review of the DTTP scheme.

Question 3
Is the passport renewal process operating appropriately? If not, how should it work?

Sanctions for misuse

2.4 The consequences for breach of the scheme's Terms and Conditions are outlined in Annex B, and are as follows. Depending on the gravity of the breach, a passport holder may:

- receive a formal warning
- have their passport holder status suspended for a fixed period (3 months, 6 months, and so on)
- have their passport holder status removed.

Question 4
Do the sanctions for misuse of the scheme need to be changed and/or strengthened?

Extending the scheme

2.5 The scheme was originally designed to specifically cover 'corporate to corporate' loans for simplicity reasons. This resulted in all other entities being kept outside the scheme.

2.6 In relation to the types of borrowers that could benefit from the scheme, the Office of Tax Simplification's (OTS) Final Report on Partnerships in January 2015 asked HMRC to review the scope of the DTTP scheme (paras 4.47 to 4.50 of the report), stating that "There appears to be no particular reason for limiting the DTTP Scheme to corporate borrowers where the UK tax risk is with the identity of the lender rather than that of the borrower. This distinction appears to simply derive from the terms on which the scheme was written".

2.7 In relation to the types of lenders that should be able to benefit from the scheme, representations have been made to HMRC, the Treasury (HMT), and the Department for Business, Innovation and Skills (BIS) regarding expanding the scheme to benefit a wider range of entities. Specific scenarios have been cited, including sovereign investors, pension funds and partnerships as lenders.

2.8 In some circumstances, the scheme does already admit transparent (non-corporate) lenders where they are known to act on behalf of a corporate lender with whom the loan originates. Question 21 of the Technical Questions and Answers document (Annex D*)* details situations in which transparent US LLCs and S-corporations may be admitted to the DTTP scheme. In these cases, the transparent LLC is generally registered with the DTTP scheme on the understanding that it represents the S-corporation as the original corporate lender.

Question 5
Is the current scope of the scheme, which mainly covers corporate to corporate lending, adequate? If expansion is advantageous, what entities should and should not be admitted to the scheme and why?

UK partnerships as borrowers

2.9 Turning specifically to UK partnerships as borrowers and whether the DTTP scheme should be expanded to include them, the OTS report cites a specific example at para 4.48 of a UK Limited Partnership (LP) established to act as a Joint Venture vehicle to hold a UK property. This LP would have a UK general partnership and two UK corporate partners. Any borrowing by the UK LP from a non-UK lender would need to go through the traditional "certified claim" method prior to the payment of interest. The suggestion is that HMRC consider admitting these scenarios to the DTTP scheme.

2.10 Another OTS example at para 4.49 is that of a UK partnership borrowing externally from 2 US lenders (both with DTTP reference numbers) where it was not possible to access the DTTP scheme, as the borrower was not a UK corporate body.

2.11 In contrast with the examples from the OTS report above, it should be noted that partnerships are excluded from the recent private placements measures (described in the Introduction) in cases where they are borrowers under a loan, and have always been excluded from the Quoted Eurobonds legislation. However, the Eurobond exemptions may apply where a company partner issues a security as the general partner of an LP.

Question 6
What potential benefits and / or difficulties may arise from admitting UK partnerships to the DTTP scheme as borrowers?

Overseas partnerships as lenders

2.12 The previous section refers to situations where UK partnerships as borrowers are excluded from simplifications available in legislation. Conversely, in cases where they are lenders (rather than borrowers), sovereign investors, pension funds and partnerships can take advantage of private placements and Quoted Eurobond exemptions, provided the conditions for these exemptions are met.

Question 7
What potential benefits and / or difficulties may arise from issuing passports to partners in overseas partnerships if they are admitted to the DTTP scheme as lenders?

2.13 Including overseas partnerships in the scheme as lenders may present compliance difficulties, as they are treated as transparent in most jurisdictions. By contrast, companies are opaque and therefore apply to join the DTTP scheme on their own behalf and from the jurisdiction in which they are tax resident. Overseas partnerships as lenders enable a ‘one-to-many’ situation with a single UK borrower effectively paying multiple overseas lenders at the same time. Not all of the overseas lenders may be resident in the same jurisdiction and hence differing rates of relief (or no relief) from WHT may be due under the respective treaties.

2.14 The make-up of the overseas partnership may change and this could also present compliance difficulties. For example, a non-UK partnership could be set up as lender with one set of partners and obtain a DTTP passport to make loans to the UK. The partners could then change, possibly very quickly, or over the duration of the 5-year DTTP validity period. One of the new partners could be from a country with which the UK has no valid treaty. By contrast, if a company with a DTTP migrates to a new country of residence, it has a company secretary who can inform HMRC of such a move.

Question 8
If overseas partnerships were admitted to the DTTP scheme as lenders, how would HMRC police this and receive sufficient information on the parties involved to prevent abuse, whilst keeping the compliance burden low on both sides? For example, should partners’ passports have a shorter duration of one or two years and be contingent on all of the partners being either companies or individuals resident in the same jurisdiction?

Sovereign investors and pension funds

2.15 The current DTTP Terms & Conditions (Annex B) state at paragraph 3 that "Eligibility is restricted to independent foreign corporate entities and business forms treated in their country of residence as such", thus excluding sovereign investors who are typically an arm of government in their state of residence.

2.16 Sovereign investors commonly create a UK LP as an investment vehicle. As an example, an LP will comprise the sovereign investor (or its representative entity) as General Partner and at least one non-UK company/LP/LLC as Corporate Partner(s). Due to the transparency of the UK LP, the borrower is required to obtain separate directions for each of the partners before making payments of gross interest – one for the sovereign investor and the remainder for the corporate or other entities in separate applications to the HMRC's Double Taxation team.

2.17 Alternatively, the sovereign investor is required to structure the LP as a whole to meet Sovereign Immunity requirements – a somewhat complex task given that the corporate entities cannot claim Sovereign Immunity. The associated administrative burden in either case has been stated, informally, by representatives of some sovereign investors as a potential barrier to them making large scale debt-based investments in the UK.

2.18 Some sovereign investors are government pension funds. Aside from sovereign investors, ordinary pension funds (i.e. those not claiming sovereign immunity) also invest in the UK. The generally held view is that pension funds are tax resident in a jurisdiction for tax treaty purposes, even if they do not pay tax (see Paragraph 8.6 of the OECD model tax treaty commentary). The UK agrees with this and therefore regards pension funds as resident for the purposes of tax treaties where they are located and able to access treaty benefits.

Question 9
Are there any obstacles to prevent sovereign investors and overseas pension funds being admitted to the DTTP scheme, such as issues of liability to tax and entity characterisation? Admittance to the DTTP scheme would also require publication of their names in the public register of passported lenders.

Question 10
Other than those detailed above, what investment structures are typically used by sovereign investors and pension funds, and are these suited to the mechanics of the DTTP scheme?

3. Assessment of Impacts

Summary of Impacts

Exchequer impact (£m)	The DTTP scheme is a purely administrative measure to simplify the process for claiming relief from withholding tax under a double tax treaty. The current scheme, and any changes following this consultation, is not expected to have any Exchequer impacts.
Economic impact	By providing a swifter and more efficient method of providing double tax treaty relief, the DTTP scheme facilitates corporate-to-corporate lending into the UK. This in turn supports UK investment and growth. The benefits of the scheme depend on the number of treaty lenders who participate. Around 3,000 passports have been issued in the 5 years since the scheme commenced. This consultation is seeking views on how the scheme may be amended or extended with the aim of increasing the benefits further.
Impact on individuals and households	The DTTP scheme is a business tax measure which does not directly affect individuals or households. It does not impact on family formation, stability or breakdown.
Equalities impacts	There are no impacts on any groups which share a protected characteristic.
Impact on businesses and Civil Society Organisations	The main impact of the DTTP scheme is expected to be a reduction in the administrative burden on investors of debt into the UK and their UK borrowers compared with the "certified claim" approach for each loan. We will look to collect evidence on the scale of this through the consultation process, including assessing the impact of possible changes to the scheme. We expect the impacts to be mainly on larger businesses with complex international operations.
Impact on HMRC or other public sector delivery organisations	Any costs or other impacts on HMRC arising from any changes to the DTTP scheme following this consultation are anticipated to be negligible.
Other impacts	<u>Impact on small businesses:</u> As highlighted above, we expect most of the impacts to be on large international businesses but would welcome views on any possible impacts on small businesses or other organisations. Other impacts have been considered and none have been identified at this stage. We would welcome views on this initial assessment of impacts.

4. Summary of Consultation Questions

Question 1
Is the current DTTP scheme meeting its objective of providing an administrative simplification for corporate-to-corporate lending and should it be continued? The alternative would be to return to the "certified claim" approach for each loan (see 1.5).

Question 2
Do the current DTTP arrangements create any barriers to the making of debt-based investments in the UK?

Question 3
Is the passport renewal process operating appropriately? If not, how should it work?

Question 4
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If partnerships were admitted to the DTTP scheme, how would HMRC police this and receive sufficient information on the parties involved to prevent abuse, whilst keeping the compliance burden low on both sides? For example, should partners' passports have a shorter duration of one or two years and be contingent on all of the partners being either companies or individuals resident in the same jurisdiction?

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5. The Consultation Process

This consultation is being conducted in line with the Tax Consultation Framework. There are 5 stages to tax policy development:

Stage 1 Setting out objectives and identifying options.

Stage 2 Determining the best option and developing a framework for implementation including detailed policy design.

Stage 3 Drafting legislation to effect the proposed change.

Stage 4 Implementing and monitoring the change.

Stage 5 Reviewing and evaluating the change.

This consultation is taking place during stage 2 of the process. The purpose of the consultation is to seek views on the detailed policy design and a framework for implementation of a specific proposal, rather than to seek views on alternative proposals.

How to respond

A summary of the questions in this consultation is included at chapter 4.

Responses should be sent by 12 August 2016, either by e-mail to treatypassport.consultation@hmrc.gsi.gov.uk or by post to: Johnston Orr, HMRC, CTIS Business International, Portcullis House, 21 India Street, Glasgow G2 4PZ

Or by fax to 03000 516249 marked for the attention of Johnston Orr / Stuart Wilson.

Telephone enquiries to Johnston Orr on 03000 529540 (from a text phone prefix this number with 18001)

Please do not send consultation responses to the Consultation Coordinator.

Paper copies of this document or copies in Welsh and alternative formats (large print, audio and Braille) may be obtained free of charge from the above address. This document can also be accessed from HMRC's GOV.UK pages. All responses will be acknowledged, but it will not be possible to give substantive replies to individual representations.

When responding please say if you are a business, individual or representative body. In the case of representative bodies please provide information on the number and nature of people you represent.

Confidentiality

Information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to information regimes. These are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004.

If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals with, amongst other things, obligations of confidence. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentially can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on HM Revenue and Customs (HMRC).

HMRC will process your personal data in accordance with the DPA and in the majority of circumstances this will mean that your personal data will not be disclosed to third parties.

Consultation Principles

This consultation is being run in accordance with the Government's Consultation Principles.

The Consultation Principles are available on the Cabinet Office website: http://www.cabinetoffice.gov.uk/resource-library/consultation-principles-guidance

If you have any comments or complaints about the consultation process please contact:

John Pay, Consultation Coordinator, Budget Team, HM Revenue & Customs, 100 Parliament Street, London, SW1A 2BQ.

Email: hmrc-consultation.co-ordinator@hmrc.gsi.gov.uk

Please do not send responses to the consultation to this address.

Annex A: Form DTTP1

HM Revenue & Customs

United Kingdom Income Tax
Application for a Double Taxation Treaty Passport

Double Taxation Treaty Passport Scheme for companies receiving loan interest

For use by a company or other fiscally opaque entity resident in a country with which the United Kingdom has a double taxation treaty that provides for relief from UK income tax on interest arising in the UK.

Please

- see the terms and Conditions of the DT Treaty Passport Scheme
- give all the details asked for in the form
- sign the Undertaking in Part C and say what is your status in the company or concern
- send this application form to your country's taxation authority for certification of DT treaty residence (see overleaf) **or** attach the taxation authority's stand-alone certificate of the same and send the form to the address below. If the company has made a certified DT treaty claim within the last 12 months, send the form direct to the address below. You do not need to arrange for certification in these circumstances.

For help or more information, contact HM Revenue & Customs. LBS DT Treaty Team, Barkley House, Nottingham, England NG2 1BA or phone us on **+ 44 115 974 0897** if calling from outside the UK, or **0115 974 0897** if calling from the UK.

About the company

1 Full name of the company

2 Full registered address *(do not use a 'care of' address)*

3 Contact name

4 The company reference.

5 Phone number

6 Fax number

7 The company's country of residence

8 Has the company made a previous DT application? What reference were they given?

No

Yes

9 Is the applicant:

A corporate entity in its country of residence?

A fiscally opaque entity in its country of residence?

10 In which country was the company/concern created or organised?

11 In which country is the business of the company managed and controlled?

12 Does the company/ carry on a trade or business from a permanent establishment situated in the UK?

No

Yes

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About the company Continued

Certification of tax residence

Please complete this part and add your official stamp. You may wish to take a copy of the form for your records.

If your procedure is to send the form direct to the UK taxation authority, the address to which to send it is HM Revenue & Customs, LBS DT Treaty Team, Barkley House, Nottingham, England NG2 1BA.

Official stamp

I certify that

is resident in

within the meaning of the Double Taxation arrangements between the United Kingdom and this country

Signed

Date

About the company's tax adviser (if any)

If the company has a tax adviser, please give details. The tax adviser should have authority to represent the company for all loans for which the Treaty passport is used.

13 Adviser's name

14 Adviser's address

15 Contact name and reference *if any*

16 Phone number

17 Fax number

Declaration

On behalf of the company I apply for a DT Treaty Passport. I request that the name and address of the company be included in the published list of approved Treaty Passport holders on the HM Revenue & Customs website.

I undertake to tell HM Revenue & Customs if there is any change to the information that I have given in this form.

- The information I have given in this application is, to the best of my knowledge and belief, correct and complete.
- I have read the terms and conditions of the DT Treaty Passport Scheme and undertake that the company/concern will comply with them.
- I undertake that the company will use the DT Treaty Passport only with loan relationships where all the conditions for relief set out in the double taxation treaty are satisfied, and that I will represent accurately to any UK borrower the correct amount of relief that is appropriat
- The DT Treaty Passport will not be used by the company for any income that is effectively connected with or attributable to its permanent establishment in the UK. It will also not be used for any income which is not within the company's beneficial ownership (within the international fiscal meaning of the term) where this is relevant to the purpose of obtaining relie

A responsible officer of the company may sign. An agent (tax adviser), 'custodian' or other duly authorised person acting with the authority of the company may also sign on the company's behalf.

Signed

Date

Your name

Your status or position in the company

Annex B: DTTP scheme Terms & Conditions

HM Revenue & Customs

HMRC DT Treaty Passport Scheme
Terms and Conditions

1. Introduction and general purpose of scheme
The scheme is known as The DT Treaty Passport Scheme (or DTTP). Its purpose is to provide a swifter and more efficient method of providing for double taxation treaty relief on UK loan interest payments made by a UK corporate borrower to those overseas corporate lenders who have gone through a process of being recognised by HMRC as residents of countries with which the UK has double taxation arrangements able to claim relief under those arrangements. Proof of their recognition will be the granting to an overseas lender of the status of being a 'treaty passport holder', subject to the terms and conditions that follow.

2. Who administers it?
The DT Treaty Passport Scheme is administered by **HM Revenue & Customs, LBS DT Treaty Team, Barkley House, Castle Meadow Road, Nottingham, NG2 1BA**.

3. Who is eligible?
Any overseas corporate entity – or concern treated by its country of residence as a corporation for tax purposes – may apply for recognition as a DT treaty passport holder. Eligibility is restricted to independent foreign corporate entities and business forms treated in their country of residence as such, possessing full corporate personality characteristics that allow HMRC to consider them wholly responsible and accountable for their actions. In this context, HMRC is prepared to consider applications for passports from US LLCs and S-corporations which are wholly owned by single US corporates, and which are treated for US tax purposes as disregarded entities, fiscally indistinguishable from their parents.

The mere liability of an overseas concern to its country of residence's form of corporation tax – where taxed at all – is not of itself sufficient to demonstrate that it falls to be regarded as a "corporate entity" for DTTP purposes.

4. Applying for a treaty passport
An applicant for passport holder status will be required to apply in such a manner, and in conformity with such procedures, as HMRC establishes and publishes from time to time.

5. Discretion of HMRC to accept a passport application
The consideration and acceptance of an applicant's request for passport holder status shall be entirely at the discretion of HM Revenue and Customs.

6. How to apply, and turn-round time
An application for passport holder status shall be made on a form DTTP1, available for download from the HMRC website. Go to **www.hmrc.gov.uk** and enter **DTTP1** in the *Search* facility. HMRC undertakes to deal with any application within 30 working days of it being made.

7. Formal acceptance procedure and online Register of Passport Holders
A register of recognised passport holders is kept by HMRC, and is made available to the general public as an aid to verifying a passport holder's status. Each passport holder will have a unique identifying reference number to be used in all its DTTP dealings.

8. DTTP Register data confidentiality waivers
In participating in the DT Treaty Passport scheme, passport holders agree that HMRC may publish their names and DTTP identification details in the manner specified in the previous paragraph.

9. Entering into a passported loan
Once in possession of a treaty passport, a passport holder then has the potential to enter into a loan relationship that can be dealt with under the DTTP scheme. The passport holder should in that case provide the borrower with its DTTP reference number (verifiable by reference to the online Register of Passport Holders), and specify to it the rate of relief applicable under the relevant double taxation arrangements then in force, so that the UK borrower (or foreign corporate borrower with UK-source interest payments) can enter these details into the DTTP2 notification to HMRC.

10. UK borrower obliged to make a passport loan notification to HMRC
The passport holder should make any borrower aware that it will need to notify HMRC on a form **DTTP2** of the making of the passported loan, and of the details of the loan and its main features and terms. It will be important for the information given in the form to be both accurate and complete, not the least because that information will be used by HMRC as the basis for the subsequent Direction under SI 1970/488 that will exempt the interest payments. Any flaws, errors or misrepresentations in the borrower's notification may call into question – if not vitiate – the legal effect of this Direction.
The borrower should aim to send the form DTTP2 notification at least **30 working days** before the first interest payment for which exemption is needed. Where this condition is met, HMRC will as soon thereafter as is practicable issue the UK borrower with the Direction.

11. Consequences of a failure by a UK borrower to make any or timely notification
If the UK borrower does not send the DTTP2 notification to HMRC at least 30 working days before the first interest payment, **then HMRC can give no assurance that any Direction will be issued in time to be applied to a particular interest payment.** The UK borrower may therefore not get a Direction before it has to make interest payments.

If late delivery of the DTTP2 notification results in HMRC being unable to issue a Direction before a particular interest payment is made, the borrower must fulfil its legal obligation to withhold tax, and the passport holder will need to make a certified repayment claim, as outlined in paragraph 12 below.

12. Repayments
The DTTP shall apply only to claims for relief at source: any claim for a repayment of tax shall be by a full certified claim from the passport holder only.

13. Use of DTTP only where all conditions for relief are present
A passport holder will enter into a loan making use of the DTTP **only** where (to its certain knowledge and belief) all conditions for relief under the relevant double taxation arrangements are satisfied.

This will include (but not be restricted to) factors such as:

- where being subject to tax in the passport holder’s country of residence is required
- where relief is restricted only to the amount of income remitted to that country of residence (where it is not intended to remit the entirety, then the DTTP will not be available or used)
- where the passport holder cannot reasonably demonstrate that it is the beneficial owner of the interest (in the international fiscal meaning of that term), and where this is a requirement for relief.

14. Discretion of HMRC as regards a particular loan
HMRC reserves the right not to apply the DT Treaty Passport scheme facility to a particular loan, in which eventuality it will notify both lender and borrower as early as possible.

15. Discretion of HMRC as regards a particular borrower
HMRC reserves the right not to apply the DT Treaty Passport scheme facility in respect of any loan arrangements entered into by a particular borrower, in which eventuality it will notify that borrower of its decision.

16. Material changes affecting a passport holder
A passport holder will be obliged to notify HMRC if there are any material changes to its form or circumstances – such as a change in its business form or country of residence. Failure to do this in a timely manner may result in the revocation of passport holder status.

17. Consequences for breach of Terms and Conditions
A passport holder found to be in breach of the DTTP Terms and Conditions may, depending on the gravity of any breach:

- receive a formal warning
- have their passport holder status suspended for a fixed period (3 months, 6 months, and so on)
- have their passport holder status removed.

18. Grant and renewal of passport holder status
HMRC sought to make the initial granting of treaty passport status as far as possible an orderly and staggered procedure, to accommodate numerous applications vying with each other for processing and approval. This worked well in the main, and this initial stage of the DTTP Scheme went smoothly and successfully.
HMRC would also like to avoid similar strains on the DTTP system at renewal time, and seeks by such an approach to ensure a more evenly spread pattern of occurrences at both inception and renewal stages.
More details will be published nearer the time on HMRC’s website www.hmrc.gov.uk.
When granted, a DT treaty passport will be good for 5 calendar years. It may be renewed on application to HMRC by letter, preferably not less than 4 months before that date.

19. HMRC’s right periodically to review how a passport holder is using its passport holder status
In applying for – and accepting – the status of a passport holder, that passport holder undertakes to co-operate with HMRC should it choose to review how it is using its status, and agrees promptly to provide HMRC with any and all information needed in connection with such a review.

20. Reporting passported loans made by a passport holder
That co-operation shall extend to providing HMRC, when asked, with copies of loan documentation, responses to specific requests for information about any loans entered into using a treaty passport. The passport holder specifically agrees to provide – on request by

HMRC – a schedule of ‘passported’ loans contracted by it within a specified period; that schedule identifying the UK borrowers, dates of loans and amounts lent.

Further information about HMRC’s DT Treaty Passport scheme may be found online by going to **www.hmrc.gov.uk** and entering **DT Treaty Passport** in the *Search* facility.

July 2011, updated April 2013

Annex C: Form DTTP2

HM Revenue & Customs

Double Taxation Treaty Passport - notification of loan from a passport holder

Notification of loan details by UK borrower

- Please complete this form with full details of the UK borrower and the loan.
- Send the completed forms to:
  HM Revenue & Customs, LBS DT Treaty Team, Barkley House, Castle Meadow Road, Nottingham NG2 1BA
- HM Revenue & Customs will use the information given in this form to issue you a Direction (under Statutory Instrument 1970 No.488) to make payments of loan interest taxed at the rate specified by the double taxation treaty between the UK and the country of residence of the DT Passport holder.
- If you need help with this form, please call HM Revenue & Customs on **0115 974 0897**

UK borrower details

1 Full name of the UK borrower

2 Full registered address *(do not use a 'care of' address)*

Postcode

3 Contact name

4 The company reference

5 Phone number

6 Fax number

7 Address of Tax Office to which the UK borrower makes returns of income

Postcode

Tax office reference

8 Does the company have a tax adviser?

No ☐ Yes ☐

9 Adviser's name

10 Adviser's address

Postcode

11 Adviser's phone number

12 Contact name

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DT Treaty Passport holder (Overseas lender)

13 Full name of overseas lender

14 HMRC DT Treaty Passport number

Loan details

Date of the loan agreement	Exact date on which loan will expire	Amount of loan and currency	Percentage rate of interest	Payable dates(s) of the interest

X

\+

Click here to add a row

Tick this box if there is a special relationship between the two parties to the loan or they have a special relationship with any third person (*S.147 Taxation (International and Other Provisions) Act 2010*).

Syndicated loans

If the debt right is part of a syndicated loan please give additional details.

15 The amount of the overseas lender's participation

17 The total loan facility

16 Date of the original loan agreement

DT Treaty rate

- If the overseas lender has not already informed you of the treaty rate go to www.hmrc.gov.uk and look for DT Digest in the Search facility.
- In the DT Digest find the entry for the lender's country of residence and look at the Interest column.

18 Overseas lender's country of residence

19 Tick the appropriate box to specify the relief under the DT Treaty.

Full relief (No UK income tax to be deducted)

UK income tax to be deducted at reduced rate.

Enter percentage of reduced income tax rate.

Declaration

20 **Who may sign on behalf of a company**
A responsible officer of the company may sign. An agent (tax adviser) or other duly authorised person acting with the authority of the company may also sign on the company's behalf.

The information I have given on this form is to the best of my knowledge and belief, correct and complete.

Signature

This section is to be signed and dated on your printed version.

Date

Print your name below and enter your status

Annex D: DTTP scheme Technical Questions & Answers

HM Revenue & Customs

Double Taxation Treaty Passport Scheme: Technical questions and answers

How the Scheme works

1
Treaty Passports and certified DT claims process
Q. Will both systems (treaty passports and the certified DT claim process) run side by side?

A. Passported loans can be made from 1 September 2010. The certified claim process will continue as the 'default' method of obtaining relief.

2
Period of Treaty Passport
Q. Could we grant passports for 10 years instead of 5?

A. We have decided on five years initially, which is longer than originally requested in the consultation, where suggestions ranged between one and three years. We may make a policy decision to extend it in the future but that depends entirely on how well the Scheme works.

3
Period of Direction issued to UK borrower
Q Is the Direction tied to the period of the treaty passport?

A. Our present policy, which will remain unchanged, is to issue a Direction for no more than 5 years, with some flexibility on a case by case basis – for example, if the certain term of a loan is slightly longer than this. Our policy on the extension/renewal of a Direction is detailed in HMRC DT Guidance Note 8 (go to **www.hmrc.gov.uk** and enter **DT Guidance Note 8** in the *Search* facility).

This will be the case even when the passport reaches its expiry date prior to the Direction period running out. The only departure from this will be when the Direction is explicitly withdrawn by HMRC. See the answers to questions 6 and 9 below for further details.

4
Residence certification by overseas tax authority
Q. Why have HMRC restricted the use of an existing certification to one issued within the last 12 months?

A. The 12 month time limit is to ensure that the certification is suitably 'current' and can therefore be presumed to be accurate. 12 months is a convenient and reasonable cut-off.

5
Automatic clearance
Q. Could HMRC offer an automatic clearance if the form DTTP2 is completed correctly?

A. At present we cannot offer this as we don't have the IT capability. As explained at the presentation we hope to increase on line filing capability in the future so we may be able to look again at this question once the technology is in place.

6
Withdrawal of Passport by HMRC
Q. What happens to the borrower if the lender has their treaty passport withdrawn?

A. HMRC would ordinarily need to cancel a Direction to render it void; in making a decision to do so, HMRC would consider, on a case by case basis, the circumstances surrounding the withdrawal of the passport holder status and how that might impact on the right to treaty benefit in respect of the loan concerned.

It is possible that a passport may be withdrawn due to misuse of the Passport Scheme where the lending entity still has the general right to treaty benefits: it would be forced then to make claims on a certified basis only, but it may not be necessary to cancel existing Directions issued within the Scheme.

The borrower can therefore rely on a Direction in the usual way unless informed otherwise by HMRC in a notice of cancellation. In this context, the loss of passport holder status by a lender will not **of itself** be viewed as a material change invalidating a Direction.

In a connected party lending situation the borrower may become liable to withholding tax if it knew or might reasonably have been expected to know that the passport holder did not qualify for relief, as this would undermine the good faith basis on which HMRC had acted in issuing the Direction.

7
Declining a Passport application
Q. What are the factors that may influence HMRC to decline an application for a passport?

A. The passport application form DTTP1 is designed primarily to confirm the existence and residency status of the prospective passport holder, with the presumption that the applicant will have established a successful and trouble-free DT claim history with HMRC. We anticipate that refusals will be rare, but cannot exclude the possibility that HMRC's previous dealings with the applicant might give us reservations about granting a treaty passport. The factors bearing on HMRC's decision will thus vary on a case by case basis.

The loans

8
Changes in a loan and its ownership

Q. Can you clarify the circumstances in which a treaty passport may be used as a substitute for a new or fresh claim?

A. The main purpose of the Treaty Passport Scheme is to reduce claim paperwork and delays falling on overseas corporate lenders. It does this principally by replacing the traditional certified claim which requires certification by the taxation authorities of the lender's residence state with a shorter customer-driven notification process.

As a general rule, **and assuming that all relevant treaty passport criteria are met**, if a claim form would previously have been necessary, then the treaty passport can now be used instead.

Specifically, this can cover

- Changes in material circumstances in the lifetime of a Direction – see DT Guidance Note numbers 2 and 8 (go to **www.hmrc.gov.uk** and enter **DT Guidance Note 2** or **DT Guidance Note 8** in the *Search* facility)

- Contractual extensions of a loan (being an instance of such a material circumstance)

- The sale or assignment of a loan. If the loan commenced before 1 September 2010 (the date the Treaty Passport Scheme began) and is sold or assigned after that date, HMRC will for passport purposes treat the date of sale or assignment as being the date the loan relationship began.

- 'UK-source' applications dealt with by DT Guidance Note 1 (go to **www.hmrc.gov.uk** and enter **DT Guidance Note 1** in the *Search* facility)

- and allowed for under the Treaty Passport Terms and Conditions - (where the borrower believes that it would be liable to UK withholding tax on interest payments)

Where the existing or new lender is a passport holder; a borrower may then submit a DTTP2 notification in place of a claim form (certified or otherwise) from the lender that would otherwise be required.

Please see the Guidance Notes mentioned above before you make any decision to take the treaty passport route, as compliance with them (in all save the claim form procedures they detail) will still be incumbent to the parties to a loan.

So far as changes, extensions and transfers of debt-right are concerned intending users of a passport in these circumstances should be especially careful to judge whether the material changes involved are potentially of such a nature as would prudently merit a fresh claim or passport application (where, for example, the passport holder's name has changed). This would be a matter for the parties to the transaction to weigh up for themselves, having regard to factors like (but not limited to) the commercial terms of the new or extended loan relationship, and any cross-ownership or community of interest relationship between the parties to a deal.

9

Changes to the loan after the Direction has been issued

Q. It is possible that a loan will cease to qualify for treaty relief after a Direction has been issued by HMRC, for example, because the lender assigns the loan. Where does the onus lie on informing HMRC so they can withdraw the Direction?

A. The present Direction template (which will be maintained) contains the following standard conditions:

'1. The Direction will automatically cease to have effect, and you will need to start to deduct tax at the full rate, if:

• there is any change in the nature or description of the income

• you learn of any change in the residence status or business details, including changes in name, address or ownership (by way of business sale, transfer or merger), of the recipient of the income

• there are any changes in your own business details, including changes in name, address or ownership (by way of business sale, transfer or merger).

If you are in any doubt about whether any of these conditions are triggered, or if you have any questions about their application, get in touch with HMRC, as soon as possible, using our contact details shown in this Direction.

*2. If payments continue after the **expiry date** shown overleaf, you should follow the normal rules on tax deduction that apply at the time you make the payment. If you are in any doubt ask your Tax Office for advice.*

3. This Direction does not affect HMRC's right to make enquiries into your company's tax returns and affairs, to ensure that its self assessment is accurate. In particular, it does not preclude a subsequent challenge under Section 147 Taxation (International and Other Provisions) Act 2010 to the arm's length character of the payments which are the subject of this Direction, in connection with the computation of your company's corporation tax liability. Payments exceeding the arm's length amount cannot be deducted in arriving at the assessable profits or allowable losses of the borrower.'

Clearly, as with any Direction, there is an onus on the borrower to notify us of any material changes it becomes aware of them. HMRC DT Guidance Note 2 goes into some detail about issues surrounding material changes during the lifetime of a Direction (go to **www.hmrc.gov.uk** and enter **DT Guidance Note 2** in the *Search* facility).

To repeat what is said in the reply to question 6 above: 'the loss of passport holder status by a lender will not **of itself** be viewed as a material change invalidating a Direction.'

In addition, of course, under clause 16 of the Terms & Conditions the passport holder is obliged to notify HMRC of any changes affecting its status as a passport holder.

10
Revolving facilities
Q. Would revolving facilities be covered in their entirety or would a new application be needed for each draw down?

A. The underlying relationship between lender and borrower stays essentially the same over the term of a revolving loan facility; in the absence of any material changes over the period of the facility which call into question the basis on which the Direction was made, then the Direction will remain good, within our usual practice on time-limitation.

11
Securitisations of contractual debt
Q. In what circumstances would HMRC accept the use of a Treaty Passport in the purchase or acquisition of this type of debt-right by a Passport holder?

A. Large amounts of money can be involved in these acquisitions and the arrangements under which sales and transfers are effected can be complex. And nearly always the UK borrowers are individuals outside the 'UK corporate borrower' scope of the Scheme as set out at paragraph 1 of the Treaty Passport Terms and Conditions.

For such reasons as these the use of a treaty passport would not always be right or appropriate to such transactions.

That said, HMRC is willing to extend the use of the treaty passport facility in situations where

- the purchase or acquisition of the debt-right by the passport holder is effected in a single transaction

- interest payments are gathered in and paid on under a single asset management agreement

- a single UK corporate entity represents itself to be, and self-assessing itself as, liable to a duty to withhold tax under Section 874(2) Income Tax Act 2007 on payments transmitted to the passport holder

Particular regard should be had to paragraphs 13 and 14 of the Treaty Passport Terms and Conditions, especially concerning beneficial ownership considerations (where pertinent to the availability of relief), by the parties to these sorts of transactions in judging whether the use of a treaty passport is appropriate.

Syndicated loans

12
Q. What are the options for the use of a treaty passport with syndicated loans?

A. A syndicate as such cannot be a treaty passport holder.

Where the syndicate has chosen to be treated as an entity under the Syndicated Loan Scheme ('SLS' - formerly the Provisional Treaty Relief Scheme), it will be the syndicate manager which conducts the syndicate's dealings with HMRC. Possession of a passport by the overseas lender will help the syndicate manager to judge the availability of DT relief available to the syndicate as a whole.

If passport holders are lending members of a syndicate that is outside the SLS, then it is open to them to make use of their passport in substitution for a certified claim (assuming the satisfaction of all relevant Treaty Passport conditions – for example, beneficial ownership where relevant). The UK borrower must then tell HMRC of that use within the required time frame with a DTTP2 notification, leading to the issue of a Direction enabling relief at source on the interest payments to that passport holder.

Overseas lending members of a non-SLS syndicate that do not possess a passport will need to make a certified claim in the normal way.

Where a UK borrower has a loan facility with multiple lenders, and frequent buying into or trading of debt-right, then HMRC recognises that individual DTTP2 notifications may place an undue compliance burden on that borrower.

As a consequence, HMRC is willing to consider entering into arrangements with that borrower whereby these individual notifications can be swept up into a monthly consolidated notification. This will still require a passport holder to follow the procedure with the borrower set out at paragraph 9 of the Treaty Passport Terms and Conditions - for example, specifying the rate of DT relief it considers itself entitled to - but in a modified form appropriate to the borrower's circumstances. UK borrowers wishing to enter into such arrangements with HMRC should contact: **HM Revenue & Customs, LBS DT Treaty Team**, **Barkley House**, **Castle Meadow Road**, **Nottingham**, **NG2 1BA**, telephone **03000 547584.**

13
First interest payments

Q. Syndicated loans can lead to DT relief applications being made days before an interest payment is due so can a speeded up process be offered?

Can we have a concession for the first interest payment to be tax free?

A. The certified claim process requires a purchaser of a participation in a syndicated loan to make a certified claim for a relief-at-source Direction in respect of the first acquisition of debt-right, with all the time-lapse implications of foreign tax office certification and post delays. The Direction is couched to cover both the first and any subsequent purchases of debt-right from the UK borrower by that lender.

The Treaty Passport Scheme will drastically reduce the waiting time with the initial application: the UK borrower will communicate directly with HMRC in its notification of a new participation, and the Direction issued shortly thereafter. There will be no need to wait until HMRC receives a certified claim form via the overseas fiscal authorities.

One consequence of the establishment of a 'notification' relationship between the UK borrower and HMRC will be that taxpayer confidentiality considerations will no longer stop HMRC from keeping the borrower (and its agents) fully abreast of the progress towards issuing a Direction – as is the case where HMRC is dealing with the lender as a claimant.

HMRC is committed to issuing Directions as soon as is practicable and will attempt to assist if there is a particularly tight timescale, but no specific commitment on turn around time can be made.

The Syndicated Loan Scheme ('SLS') for dealing with syndicated loans does not require individual applications by corporate lending members of a syndicate. Matters are dealt with entirely by the Syndicate Manager, which makes decisions on the withholding tax implications and consequences of changes in lending members and their shares in syndicate income.

The Scheme is designed so that such a concession is not needed, and in any event HMRC is trying to move away from concessions.

The lenders

14
Incentive for lenders to use the Treaty Passport Scheme
Q. What is the incentive for lenders?

A. The incentive will primarily be the time saved in omitting the certification stage; and the new treaty passport notification relationship established between the UK borrower and HMRC (which will simplify communication between the two within taxpayer confidentiality rules) should ease and speed up the Direction process.

Lenders will not be forced by HMRC into applying for a passport, or into using it if they obtain one. The certified claim route to relief remains in place.

15
Large lenders
Q. Could we give passports automatically to the larger lenders?

A. HMRC cannot discriminate in favour of one class of customers at the expense of all others.

16
Treaty Passport holder required to tell borrower to complete form DTTP2
Q. Why is the onus on the passport holder to tell the borrower of the need to complete and send a form DTTP2 notification to HMRC?

A. The passport holder has ‘signed up’ to the terms and conditions of the Treaty Passport Scheme whereas the borrower may be unfamiliar with the Scheme’s procedures; this requirement is a safeguard to ensure that the passport holder alerts the borrower to the latter’s obligations under the Scheme.

Online register of Passport holders

17
Q. What is the purpose of putting passport holder details on a publicly available online register if there is a requirement for the passport holder to provide the borrower with relevant details?

A. The online register is there so that the borrower can confirm that the lender has a current Passport and provides comfort that it is appropriate for them to submit a form DTTP2.

18
Q. Can the online register show who has applied for a passport to stop multiple applications from groups?

A. The online register will show only those who have been granted passport holder status – that is its main function, to be available for perusal by borrowers in order to verify passport status.

A Passport will be required for each corporate member of a group of companies that wish to use the Scheme, just in the same way that certified claims are required from them in non-treaty passport situations. There will be no ‘group passport’ that can be used by any and all members of a group.

Other questions

19
UK guarantors
Q. What is the position of a UK guarantor to a debt with regard to the Treaty Passport Scheme?

A. Of its nature the exposure of a guarantor of a debt will be contingent on whether – if at all – it will be called on to act on that guarantee in the case of default by the principal debtor, and assume the responsibility for making interest payments. (Any payments not categorisable as interest do not of course come into any consideration of a treaty passport context.)

In the case of such default, a new payer/payee relationship can then be said to exist between the guarantor and the overseas owner of the debt-right, which can then expose the guarantor to a withholding tax obligation. While the loan arrangements giving rise to the guarantee might have existed for some time, and was contracted with a UK borrower other than the guarantor, for the purposes of the Treaty Passport Scheme HMRC regards the date from which the guarantee is called upon (and the guarantor assumes liability for payments) as the beginning of a new loan relationship amenable to the use of a passport.

On this footing, and conditional on the guarantor being a UK corporate as provided for under paragraph 1 of the Treaty Passport Terms and Conditions, and absent any resulting changes in the overseas owner of the debt-right, the latter may make use of its passport in substitution for a certified claim in the usual way.

This assumes too that there is no bar to the use of the passport found elsewhere in the Treaty Passport Terms and Conditions.

20
Branches
Q. Can a ‘branch’ or permanent establishment of a company doing business in a country other than that of its head office rely on the treaty passport of that parent?

A. Yes.

Where, for DT treaty purposes, HMRC regards that branch as being indistinguishable from its head office, then the double taxation arrangements the UK has with the country of residence of that head office governs what relief from UK withholding tax might be available to interest paid to the branch.
That being the case, if a loan is suitable for treaty passport treatment when made by the head office, then it can be considered as so eligible when made by a branch, subject, of course, to it meeting all other treaty passport criteria for suitability and any tests (such as subject to tax in the head office residence country) laid out in the relevant double taxation treaty relied on to obtain relief.

21
United States LLCs, S Corporations and the like – fiscal transparency considerations
Q. Can you explain how these sorts of US business forms interact with the Treaty Passport Scheme?

A. The possession and use of a treaty passport involves a significant departure from the traditional certified claim procedure with its checks and verification procedures. With these considerations in mind, the intention of the Scheme is to limit the granting of passports to independent foreign corporate entities and business forms treated in their country of residence as such, possessing in full corporate personality characteristics that allow HMRC to consider them wholly responsible and accountable for their actions.

Non-acceptance into the Treaty Passport Scheme does not mean that HMRC is denying a right to make claims for DT relief, but simply that it does not consider the applicant in question to meet the intentionally narrow criteria defining those for whom the scheme is intended. Hence, for example, HMRC will continue to take certified claims in the name of fiscally transparent US partnerships in the usual way, even though these are ineligible for passports.

A United States multi-member LLC which has elected under ‘check the box’ to be taxed on a simple corporate basis is eligible to apply for and use a passport, as it meets the criteria of both Article 3(1)(b) of the UK/USA Double Taxation Convention and paragraphs 1 and 3 of the Treaty Passport Scheme Terms and Conditions. HMRC is also prepared to consider issuing a passport to a US LLC which is wholly owned by a US corporate single member, and which is treated for US tax purposes as a disregarded entity, fiscally indistinguishable from its parent.

Although US S-corporations are required to file separate US income tax returns they are (in broad terms) required to determine and allocate ‘tax attributes’ (linked to business profits) to their individual owners proportionate to their share ownership; these tax attributes are then brought into account in assessing that owner’s overall tax exposure.

Drawing a general analogy with the circumstances of a disregarded entity LLC, HMRC will consider issuing a passport to an S-corporation which is owned by a single US corporate owner, with the entirety of the tax attributes of the S-corporation thus attracted to that single owner.

22

EU Directive on Interest & Royalties

Q. Is there any plan to extend the Treaty Passport Scheme to applications under the EU Directive on Interest and Royalties?

A. The EU Directive (Council Directive 2003/49/EC) is covered by specific UK legislation dictating its operation and time limits. The Treaty Passport Scheme is a change of process within the existing legislation covering withholding tax on payments overseas that are relievable under double taxation arrangements. As such the two systems are and should remain separate – not least to avoid any need for legislative changes.

Updated April 2013