

Syndicated Loan Scheme Guidelines

1. Introduction

In 1999, the Provisional Treaty Relief Scheme ('PTRS') was introduced to help speed up the UK's double taxation treaty relief process involving UK-source payments of **interest**.

It covered two particular types of loan situations:

- **Syndicated Loans** where the overseas lending members are **corporations**, and where a **Syndicate Manager** acts on behalf of all the members of the syndicate
- **One-to-One loans** for low-risk loans made by a single overseas lender to an unconnected UK corporate borrower, where there is **no common shareholding or ownership** between the parties to the loan

Following changes in 2007 to HMRC's treaty relief processes and the subsequent introduction of the DT Treaty Passport scheme, the One-to-One Loan aspect of the PTRS are no longer needed. This part of the PTRS will therefore be discontinued with effect from 1 September 2010.

The part of the PTRS dealing with syndicated loans is being retained under the name of the **Syndicated Loan Scheme ('SLS')**. These are the Guidelines for the SLS.

2. Overview

The SLS is designed to provide an efficient and unified mechanism for giving relief from withholding tax deductible on interest paid to the lending members of a syndicate who are resident in countries which have double taxation arrangements with the United Kingdom providing for such relief.

It should be rare to find connections between the two sides to a syndicated loan raised on the open market. Where lenders are concerned, such syndicated debt-rights are commonly

traded on commercial terms between the banks and similar concerns that usually make up such syndicates, in what has been termed “the secondary loan market”. This implied arm’s-length distance between the parties is a primary consideration behind HMRC’s willingness to moderate the strict rule that such changes in beneficial ownership require a fresh application for treaty relief from the new member of the syndicate.

For a syndicate to be allowed into the SLS, it is essential that there is no relationship between the UK borrower and any lending member of the syndicate other than that of borrower and lender, and that the loan is on full arm’s-length terms. If these criteria are satisfied, HMRC is prepared to waive the requirement that each overseas lending member must make a separate application for double taxation relief. Instead, HMRC is prepared to consider a single application from the Syndicate Manager acting on behalf of the syndicate, with the Syndicate Manager (or SM) assuming appropriate representational and oversight responsibilities.

3. The Syndicate Manager

The Syndicate Manager is treated as acting for and on behalf of the syndicate’s lending members. The focus is on the loan itself.

With these considerations in mind, we will accept a single *composite application* from a Syndicate Manager in the name of a **new syndicate**. With this composite application, we will expect the Syndicate Manager to give us enough information about the loan, and all those initially party to it.

We will regard the Syndicate Manager as the main channel for communications between us and the syndicate members, and as the primary source of information concerning any changes in participation, or variations to the underlying terms of the loan.

For SLS purposes, we are willing to treat not only professional Agent Banks as “Syndicate Managers”. We will also accept as a Syndicate Manager a UK borrower (or its professional agents) who satisfies HMRC that it is competent to act for the lending members of the syndicate and is able to comply fully with the requirement to provide information to HMRC about changes to those lending members.

This will require us to place great reliance on the information provided by the Syndicate Manager, while recognising that this will be no more than that represented to the Syndicate Manager by the syndicate members. HMRC expects no more from the Syndicate Manager than that they will supply the information obtained in good faith from the syndicate members.

It is always possible that - despite the Syndicate Manager doing all that is asked of them - an application might fail. This would usually be as a consequence of the presence of factors not readily or reasonably within the knowledge of the Syndicate Manager - such as a community of interest between a lender and the borrower, which invokes the “special relationship” provisions of a treaty.

It is important to remember from the outset that **if** relief is not found to be due as claimed, HMRC will look to the UK payer for the tax that ought to have been deducted. Again, it will be a matter for the parties to the loan to make their own contractual and other arrangements to safeguard themselves against the consequences of any failure.

4. Commitment of the Syndicate and Syndicate Manager to the SLS

With the SLS, HMRC asks for and requires a level of commitment from the Syndicate Manager judged to be commensurate with the potential revenue risks to the UK Exchequer set against the easing of compliance burdens on non-resident lending members of a syndicate.

It will be the responsibility of a syndicate and its Syndicate Manager to weigh up all these factors and the potential exposure it might involve them in before deciding to go down the SLS route.

HMRC asks them to assume the responsibilities incumbent in seeking SLS cover willingly and wholeheartedly, and with the consent and participation of all involved in the syndicate – both lenders and borrowers.

HMRC considers that it may reasonably expect such a commitment - especially by the Syndicate Manager - from the outset as being for the lifetime of the loan's participation in the SLS. And that it is the syndicate's intention that participation in the SLS will itself be a long-term venture.

HMRC will treat any evidence to the contrary on either ground as sufficient reason for declining to accept a syndicate into the SLS.

5. Lending members of the syndicate

The SLS is intended to cover only those lending members of a syndicate able to qualify under any double taxation arrangement as **corporations**.

Relief from withholding tax under the SLS is not available to any of the lending members of the syndicate which are, for example, see-through concerns such as US limited liability companies (LLCs) or partnerships.

Where a syndicate includes lending members which are not straightforward corporations the syndicate manager may, nonetheless, make an application to include a loan into the Scheme.

In these cases the following additional conditions apply.

- No more than **20%** of the total value of the loan may be held by partnerships or LLCs.
- And partnerships and LLCs may make up no more than **20%** of the total number of lending members in a syndicate.
- UK tax should be deducted from any interest that is owned by a partnership or LLC.
- Each partnership or LLC is required to make a separate, formal application for double taxation relief.
- When a partnership or LLC establishes that all of its partners or members are able to benefit from the terms of a double taxation convention, HMRC will consider if it is possible to issue a SI 1970 No488 Direction to the payer of the interest in respect of interest payments that are paid to the partnership or LLC.
- If tax is deducted from interest payments the partnership or LLC, and not the syndicate, must claim repayment of that tax from HMRC.

6. Initiating the SLS process

The syndicate manager should complete an application form **SLS-SM1** and send it to HMRC. The form is available for download by visiting www.hmrc.gov.uk and looking for **SLS-SM1** in the *Search* facility. Alternatively copies may be obtained by calling **0115 974 0897** (fax 0115 974 0666).

This form asks for a summary of the main elements of the loan. It also requires a declaration and assurance that the Syndicate Manager is acting with the authority in this matter of all of the lending members of the syndicate. The Syndicate Manager undertakes to provide all the information that might be required by HM Revenue & Customs to process the application, including copies of relevant loan documentation.

7. Country-specific “Blocks” of lending members

Where a syndicate contains lending members from more than one overseas country, the rate of treaty relief may vary, depending on the terms of individual double taxation agreements. In addition, there may be members for whom treaty relief is inappropriate (an ITA2007/S991 UK bank, for example), or for whom it is unavailable (say, a resident of a country with which the UK has no arrangements in place to relieve interest payments).

In such cases, we ask Syndicate Managers to group and list lending members’ details country by country, as a simple and efficient way of ordering the factual information given to them by those members. If any lending members are “treaty passport holders” under HMRC’s DT Treaty Passport scheme, and their status as such has been demonstrated to the Syndicate Manager, it would be highly desirable for this fact to be indicated in the listing – say, by the use of an abbreviation like “DTTP holder”.

In accepting a DT treaty passport holder as a lending member of a syndicate, a Syndicate Manager does *not* need to send HMRC a notification of this to HMRC like a borrower in a one-to-one loan. This is because the way in which DT relief is authorised is different for syndicates and one-to-one borrowers. The notification that HMRC gets from a one-to-one borrower is used to prepare a Direction then issued to it to exempt the interest payments; while in a SLS syndicated loan, it is the Syndicate Manager which is authorised on a continuing basis to manage and apportion DT relief between qualifying blocks of lending members of the syndicate, without the need for a Direction relating to each such lender.

The **country-specific “Blocks”** should allow for complete transparency in following - and referring to - the separate income streams that are being given relief under different double taxation treaties.

It follows that sometimes more than one such list will attract the same rate of treaty relief. A list of Italian lending members will attract a reduced rate of 10% UK withholding tax - as may perhaps a list of Canadian members. A list of US members might be eligible for gross payments - as may that for French members.

The SI 1970/488 Direction we issue will be couched in terms of these blocks, and we can group them together for the purpose of specifying which rate of treaty relief covers which blocks.

8. Listing “no relief” and withholding tax inappropriate lending members

A separate Block should also be designated for any syndicate members who are not able to be paid interest without deduction of tax. Examples of lenders whose shares will be placed in this block include any US partnership or LLC; any other non-corporate lender and any lender which is resident in a country without appropriate double taxation arrangements with the UK.

Another Block should be reserved for any lending members who fall outside withholding tax considerations, chiefly those who qualify for gross payment of interest under the provisions of UK law.

9. Example

As the sort of thing we have in mind, in one example the syndicate might designate the following as Blocks:

- “Block A” for US residents (no deduction)
- “Block B” for German residents (no deduction)
- “Block C” for Canadian residents (10% deducted)
- “Block D” for the shares of any syndicate members resident in the UK. *(For example, ITA2007/S991 banks and companies to whom payment is made in accordance with the provisions at ITA2007/Part 15, Chapter 11.)*

10. Accepting a syndicate into the SLS

If HMRC is happy for the syndicate to be accepted fully into the SLS, it will issue a formal SI 1970/488 Direction to each UK payer.

This will have a schedule setting out

- the UK payer(s) entitled to take advantage of the SLS arrangements, and
- the overseas syndicate members for which it is applicable - grouped Block by Block, and specifying the rate of relief available to each Block.

If HMRC for whatever reason considers that the SLS is inappropriate to the syndicate, HMRC will look to each UK payer to meet its obligation to account fully for any and all tax due.

11. Bringing existing syndicates into the SLS

Existing loan syndicates, whose individual overseas lending members have already applied for and obtained SI 1970/488 Directions from us to give treaty relief at source, might consider that the SLS's treatment of the syndicated loan as a unity would be of benefit to them.

For example, where secondary trading in debt-right is anticipated, and the new overseas lending member(s) would otherwise have to take the traditional certified application route before becoming entitled to relief at source.

We are willing to consider applications from existing syndicates in these circumstances, **but** only where

- A new overseas lending member has joined the syndicate and needs treaty relief.
- They would meet the criteria for SLS treatment under the normal rules for **new** syndicated loans.
- And there are no open unresolved applications for relief at source from the old members of the syndicate.

The entry of the new lending member will be the "trigger" for the Syndicate Manager to seek the admission of the loan into the SLS.

The Syndicate Manager may do this on an application form **SLS-SM1A**. This form is also available to download from the HMRC website at www.hmrc.gov.uk. Just as with the form SLS-SM1, the SLS-SM1A asks for the names and details of all the members of the syndicate, including the new member(s).

In these cases we also ask for the HMRC references under which double taxation relief was given to the old members of the syndicate. This information should enable us to gain access to all of the information we need about the loan and the parties to it. If we meet any difficulties then we will contact the Syndicate Manager for help. The SLS-SM1A stands in its own right, and the new lending member(s) do not need to apply for relief through their own tax authorities in the usual way.

In processing the syndicate's application to join the SLS, we will take the opportunity of re-appraising the information we have about the loan, and the old and new syndicate members, liaising with other parts of HMRC and the Syndicate Manager as appropriate.

If the syndicate's application is successful, we will cancel all the current individual SI 1970/488 Directions and replace them with a single Direction covering the whole syndicated loan.

Thereafter, further secondary loan transfers and lending member changes can be handled by both HMRC and the Syndicate Manager under the SLS normal review and reporting arrangements.

12. Reporting of syndicate changes by a Syndicate Manager

The administrative burdens for both sides will be kept appropriately "light".

A Syndicate Manager may want to place a syndicated loan into the SLS before the syndicate's membership has been extended beyond the loan's original arrangers and co-arrangers. In which case, we are willing to proceed with the application, provided the Syndicate Manager undertakes to provide details about the full "cast-list" of syndicate members at the conclusion of this "primary syndication" stage, when the syndicate may be said to be fully formed. The application form asks the Syndicate Manager to give an estimate of when the primary syndication will be concluded, so that the final composition of the syndicate can be confirmed to us at the appropriate time.

Subsequently, the Syndicate Manager will not be asked to notify us automatically of every subsequent change in the syndicate's membership, but only where these involve changes in the proportions of the interest payments attracting treaty relief at differing rates.

We only expect the syndicate manager to volunteer information about secondary trading changes where this involved a transfer of debt-right from one rate of treaty relief to another. This means that we do not expect to be told of a transfer from one member of a block to another where the amount of relief given under the two treaties is the same (say, from a US bank to a French bank, where full relief is granted under either treaty). But we will want to know if the US bank sold on to (say) a Canadian bank, as this means that the interest in question might no longer attract full relief - instead, under the UK/Canada treaty, the UK may be entitled to deduct tax at 10%.

When we have been told of such changes, we can then issue an amended SI Direction to the UK borrower not only to reflect the factual and legal basis of the relief, but also to give the UK company the comfort and protection such an amended Direction would provide. Subject to HMRC being notified of changes within time, and being satisfied as to the double taxation relief available, HMRC should be able to issue any revised SI Direction then called for to cover payments made from the date of the change or changes.

13. Material changes sufficient to terminate the SLS cover

While the SLS arrangements are designed to accommodate secondary trading and changes in syndicated debt-right, Syndicate Managers and participants should take particular care to remember that the intention of SLS-routed relief is to cover payments to overseas **corporate members** only.

The assignment, sale or other transfer of SLS relieved debt-right to overseas non-corporate parties will therefore constitute a fundamental material change sufficient to terminate the further application of the SLS arrangements to the syndicate, with appropriate consequences for **all payments** made to non-resident lending members of the syndicate.

In cases of doubt, a Syndicate Manager should contact HMRC immediately.

14. Periodic Review of individual syndicates

Periodically, we will want confirmation of the membership of a syndicate - for example, at the preceding interest payment date. This might involve us asking the Syndicate Manager to provide further information, such as copies of novation certificates. And if approaches to individual syndicate members are needed, we will route these through the Syndicate Manager, so that they are kept fully in the picture.

15. Periodic Syndicate Manager Review

From time to time, we will want to learn about the detailed arrangements individual Syndicate Managers have in place to meet their SLS undertakings, and how exactly this is done by reference to the Syndicate Manager's standard operational practices for administering syndicates. We intend, on a cyclical basis, to ask **all** participating Syndicate Managers to respond to this sort of review.

16. Loan Documentation & Confidentiality

A copy of the Loan Agreement must accompany the SLS application, together with copies of any other documentation that throws light on the basis for both the loan and the case for double taxation relief.

For example, Agent Banks will often already have their own pro-forma summaries in the shape of term sheets and administrative fact request forms. If a Syndicate Manager feels that these will usefully supplement the Loan Agreement, please copy these too.

Syndicate Managers must be ready to supply any other information or documentation that HMRC may consider it requires in connection with the SLS application or any time thereafter.

Bearing in mind considerations of commercial sensitivity, please note that all information provided in connection with the SLS will be covered by the normal very strict HMRC rules of taxpayer confidentiality.

HMRC will respect your right to business privacy, and will treat what you tell us as being in confidence.

17. Information and forms

More information, and the forms for use with the SLS are on the HM Revenue & Customs website: www.hmrc.gov.uk .

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