

To:

HMIT

Your Ref:

Our Ref: **FD**

**Double Taxation: Application for relief at source- *INTEREST***

**Part 1**

- 1.1 UK company paying interest:
- 1.2 Overseas applicant receiving interest:
- 1.3 Date of loan agreement:
- 1.4 Amount of loan or maximum under facility (*see Technical Memo TS 89/2000*)
- 1.5 Date of receipt of application, certified by overseas Revenue, in Centre for Non-Residents (Nottingham):
- 1.6 Termination date *\*\*If no termination date is shown, or the one given is inappropriate, please give a date for clearance to expire.*

- This memo is about an application to relief from UK tax on the above interest, under the terms of the Double Taxation Agreement (“treaty”) between the UK and
- I attach a copy of the loan agreement.

Please complete the form in **black ink** in **CAPITAL** letters and

- fill in any missing details above
- answer the questions in **Parts 2** and **3** overleaf as appropriate *and*
- take a photocopy of the completed form for your file.

**REPLY**

*\* Delete whichever is not appropriate.*

**\*To: CNR (Nottingham) DT Caseworkers**, Fitz Roy House, Nottingham.

I have completed the form and am returning it direct to you.  
I have considered the questions in Parts 2 and 3, but no further enquiries are necessary.  
I recommend that treaty clearance be granted.

**To: International Division (Business Tax Group)**, Victory House, London.

\*The loan is above £50 million. I have completed the form as far as possible.  
I am now sending it to you to consider whether the interest is excessive.  
I attach - a copy of the loan agreement  
- consolidated accounts for the accounting period immediately before the loan was made.

\*The loan is £50 million or less and I have considered the questions in Part 3 myself.  
The outcome of enquiries is shown on the attached summary. (See TS 89/2000)

Please pass the form on to Centre for Non-Residents (CNR) (Nottingham).

*District date stamp*

Inspector's signature \_\_\_\_\_

Inspector's name \_\_\_\_\_

Telephone number \_\_\_\_\_

District ref. *if not as above* \_\_\_\_\_

## Part 2

CNR (Nottingham) DT Caseworkers are responsible for checking whether the applicant is entitled to relief under the interest Article in the treaty.

Either you as District for the UK payer, or International Division (Business Tax Group), are responsible for deciding how the interest payments should be treated. Please see Technical Memo TS 89/2000 for details of how this responsibility is shared.

In completing this form please refer to TS 89/2000 and DT1919B.

IM4650 onwards and ITH Chapters 11 and 12 also give details of the technical background to treaty claims on interest and in particular the effect of the relevant parts of section 209(2) and Sch 28AA ICTA. In determining whether the interest on this loan is excessive you should refer to these instructions and can seek the assistance of International Division at any stage of the enquiry. Contact names and telephone numbers are given in TS 89/2000.

### Questions

Please enter details and "✓" as appropriate

<b>2.1</b>	What is the interest rate? - Consider section 209(2)(d) ICTA	_____ %	
<b>2.2</b>	Is the principal shown at 1.4 only part of a larger facility? If YES give the amount of the larger facility. - Consider whether the full amount could or would be lent at arm's length (section 209(2)(da) and Sch 28AA ICTA) – see IM4663	<input type="checkbox"/> No	<input type="checkbox"/> Yes
		£ _____	
<b>2.3</b>	Is the payer a 75% subsidiary of the overseas applicant or are both 75% subsidiaries of a third company? - If so, consider whether the provisions of section 209(2)(da) ICTA may apply.	<input type="checkbox"/> No	<input type="checkbox"/> Yes
<b>2.4</b>	Is there a shareholding relationship, or another form of "special relationship"? - If so, consider whether the provisions of Sch 28AA ICTA may apply.	<input type="checkbox"/> No	<input type="checkbox"/> Yes
<b>2.5</b>	Is the loan guaranteed, etc., by an associated overseas entity? - This may influence the amount that the borrower can obtain from a third party. Sch 28AA ICTA may apply to disallow excessive interest, but treaty relief may still be due.	<input type="checkbox"/> No	<input type="checkbox"/> Yes
<b>2.6</b>	Do you suspect that the loan is matched by a backing deposit, etc. from an overseas associate? - Such a series of transactions may mean that the provisions of Sch 28AA can be applied to disallow excessive interest if the full amount would not be borrowed without it. Treaty relief may still be due.	<input type="checkbox"/> No	<input type="checkbox"/> Yes
<b>2.7</b>	Is there any evidence that the loan or facility is connected with a UK permanent establishment of the overseas applicant? - The Interest Article of the relevant tax treaty may exclude such interest from relief.	<input type="checkbox"/> No	<input type="checkbox"/> Yes

Please now turn to Part 3. Your action will depend upon the amount of the loan and your answers to the questions in Part 2.

## Part 3

### Notes (see TS 89/2000)

**a** Regardless of the amount of the loan, if you have answered **NO** to questions 2.3 to 2.7, please answer questions 3.1 and 3.2 below.

**b** If you have answered **YES** to any of questions 2.3 to 2.7:

Where the loan is for **£50 million or less**, deal with all questions below after contacting International Division (Business Tax Group), and making such enquiries as are necessary to determine whether any of the interest is excessive. See TS 89/2000.

Where the loan is **above £50 million**, there is no need for you to answer the questions below. Please:

1. Attach a copy of the loan agreement and consolidated accounts for the accounting period immediately before the loan was made.
2. Send them with this form to International Division (Business Tax Group) to consider whether the interest is excessive.
3. Advise CNR (Nottingham) that you have referred the form to International Division.

**c** **In all cases**, please complete the **Reply** section on the front of this form. Delete whichever address box is inappropriate.

#### Questions

Please "✓" as appropriate

- |            |  |                             |                              |
|------------|--|-----------------------------|------------------------------|
| <b>3.1</b> | Has the loan been put in to take advantage of treaty-shopping?   | <input type="checkbox"/> No | <input type="checkbox"/> Yes |
| <b>3.2</b> | Should any part of the interest be reclassified as a distribution under S.209(2)(c), (d) or (e) of ICTA 1988?  | <input type="checkbox"/> No | <input type="checkbox"/> Yes |
| <b>3.3</b> | <i>You need answer this question only if you have answered YES to question 2.3</i><br>Is the amount of the interest excessive for any reason, so that all or part should be reclassified as a distribution under S. 209(2)(da)?                              | <input type="checkbox"/> No | <input type="checkbox"/> Yes |
| <b>3.4</b> | <i>You need answer this question only if you have answered YES to question 2.4</i><br>Is the amount of the loan/facility excessive for any reason, so that all or part of the interest payable remains subject to deduction of income tax at the lower rate? | <input type="checkbox"/> No | <input type="checkbox"/> Yes |

If you have answered YES to any question in Part 3, please attach a memo giving the outcome of your enquiries.

CNR date stamp

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For CNR (Nottingham) DT Caseworkers.

Tel. 0115 974  
Fax 0115 974 1918