

To: HMIT

Your Ref:

Our Ref: **FD**

Double Taxation: Claim for relief - *INTEREST*

Part 1

- 1.1 UK company paying interest:
- 1.2 Overseas claimant 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 claim, certified by overseas Revenue, in CNR (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 a claim 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

- **note that Self Assessment time limits apply and I need your reply by** *(see note at the foot of page 3)*
- fill in any missing details above
- answer the questions in **Parts 2 and 3** overleaf, as appropriate
- complete this form in **black ink** in **CAPITAL** letters and take a photocopy 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 CNR (Nottingham) DT Caseworkers.

Inspector’s signature _____

Inspector’s name _____

Telephone number _____

District ref: *if not as above* _____

District date stamp

Part 2

CNR (Nottingham) DT Caseworkers are responsible for checking whether the claimant 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. 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 Sch28AA 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

- | | | |
|------------|---|---|
| 2.1 | What is the interest rate?
- Consider section 209(2)(d) ICTA | _____ % |
| 2.2 | 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
_____ |
| 2.3 | Is the payer a 75% subsidiary of the overseas claimant 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 |
| 2.4 | 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 |
| 2.5 | 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 |
| 2.6 | 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 |
| 2.7 | Is there any evidence that the loan or facility is connected with a UK permanent establishment of the overseas claimant?
- 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 Appendix to 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

- | | | | |
|-----|---|-----------------------------|------------------------------|
| 3.1 | Has the loan been put in to take advantage of treaty-shopping? | <input type="checkbox"/> No | <input type="checkbox"/> Yes |
| 3.2 | 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 |
| 3.3 | <i>You need answer this question only if you have answered YES to question 2.3</i>
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 |
| 3.4 | <i>You need answer this question only if you have answered YES to question 2.4</i>
Is the amount of the loan/facility excessive for any reason, so that all or part remains subject to full withholding tax? | <input type="checkbox"/> No | <input type="checkbox"/> Yes |

If you have answered YES to any question in Part 3, please attach a memo giving details.

For CNR (Nottingham) DT Caseworkers

Tel. 0115 974

Fax 0115 974 1918

CNR date stamp

A note about Self Assessment

A claim under a DT treaty to repayment of UK tax is a claim within Schedule 1A TMA 1970. This means that CNR (Nottingham) DT Caseworkers will have to deal with any such claim within the SA provisions. There is therefore a **strict time limit** to make any enquiry into the claim, otherwise it must be processed.

If you cannot provide the information requested **by the date shown on the front page of this form** (*referring to International Division if appropriate*), please return it to CNR (Nottingham) DT Caseworkers with a memo giving the reasons. CNR (Nottingham) DT Caseworkers will act as case owner (EH 297) and decide who will carry out the enquiry.