LIBA

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24 September 2009

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Dear Chris

Code of Practice on Taxation for Banks

I am writing on behalf of the London Investment Banking Association (LIBA) in response to HMRC's 29 June Consultation Document "A Code of Practice on Taxation for Banks" ("the ConDoc"). LIBA is, as you know, the principal UK trade association for firms active in the investment banking and securities industries; a list of our members is attached.

We appreciate that you and your colleagues have had substantial feedback from our members at a series of informal meetings over the past months, and that LIBA members have also participated extensively in several of the semi-public meetings organised by the major accounting firms and by HMRC itself. We have also recently provided detailed comments to David Laing on parts of the draft guidance for the Code.

Notwithstanding the fact that the version of the Code contained in the ConDoc has taken account of some of the comments raised by LIBA members and others during the earlier informal discussions, we remain extremely concerned about the principles underlying the Code, and about the problems likely to be associated with its implementation. Similar concerns have been raised, and expounded in some detail, in the letter submitted on 22 September by the British Bankers' Association, and we fully support their comments. While we do not propose to repeat those comments here, we would like to highlight the following points:

? The concept of using the "intentions of Parliament" as a yardstick for distinguishing acceptable from unacceptable tax behaviour will result in increased subjectivity, and hence in significantly increased uncertainty. It represents, moreover, a highly unsatisfactory departure from the established judicial processes for determining the meaning of existing tax legislation.

? The application of the proposed rules to "banking groups, their subsidiaries and their branches" is discriminatory, in that it will require these entities (and only these entities) to take account of their own interpretations of the "intentions of Parliament" in deciding how to structure their operations and how to promote their services. This will place UK banks at a potentially competitive disadvantage against their non-UK competitors, and against those other UK financial institutions which, in at least some cases, provide essentially the same services to the same customers.

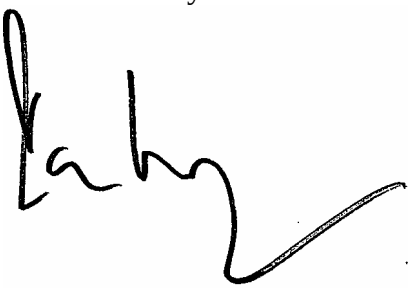
? While paragraphs 4.2 and 4.3 of the proposed Code require a bank to provide information to HMRC in respect of proposed or actual transactions which the bank believes may be "contrary to the intentions of Parliament", we find it unacceptable that there is no equivalent requirement for HMRC to respond within a given time frame, or indeed at all; this potentially leaves the bank in ignorance as to whether or not HMRC believes any such transaction to be "contrary to the intentions of Parliament". HMRC should, similarly, be required to inform the bank forthwith if they believe that any proposed transaction would constitute a breach of the Code.

? Given the increased uncertainties associated with the underlying "intentions of Parliament" concept, LIBA members are concerned that, should they undertake to comply with the Code, their existing (and otherwise satisfactory) compliance control systems may be regarded by HMRC, and/or by their auditors or legal advisers, as inadequate. As has happened with aspects of the US Sarbanes-Oxley legislation, very substantial additional administrative and systems costs could then be incurred in seeking to provide a suitably enhanced level of assurance which may in practice be unobtainable.

Should HMRC decide to proceed with the Code in its present form, despite the strong concerns expressed by us and by many other respondents, we ask that senior HMRC management keep a close watch on the way it operates in practice, and that a full review of the problems encountered by those subject to the Code be conducted as soon as practical after its initial implementation.

We remain, as always, ready to discuss any aspects of the proposed Code and associated guidance with you and your colleagues.

Yours sincerely



Ian Harrison
Director

LONDON INVESTMENT BANKING ASSOCIATION

LIST OF MEMBERS

Ambrian Partners Limited
Arbuthnot Banking Group PLC
Arden Partners plc
Bank of America Merrill Lynch
Barclays Capital
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Calyon
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Close Brothers Corporate Finance Ltd
Collins Stewart Europe Limited
Credit Suisse Securities (Europe) Ltd
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