

Revised Double Taxation Treaty Passport Scheme - UK

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On 6 April 2017, **UK HMRC** published revised terms and conditions and guidance for the double taxation treaty passport scheme. This followed consultation over the previous year in relation to how the scheme could be amended to serve better the needs of lenders and borrowers in the commercial debt market where loans were being made to UK borrowers.

By way of reminder, once a lender has applied for and been issued with a ***double taxation treaty passport ("DTTP") number***, it is able to give the passport number to a borrower under a new loan and the borrower can then apply to HMRC for a direction to pay interest gross of UK withholding tax that otherwise would be applicable. The scheme until recently has been fairly limited in scope. In particular, broadly speaking, only corporate lenders and corporate borrowers could participate.

Highlights of the revised terms and conditions and guidance are as follows:

1. The scheme is now available to all UK borrowers that have an obligation to apply UK withholding tax on interest, including UK partnerships, individuals and charities.
2. Certain transparent entities, including some partnerships, are able to participate in the scheme as lenders and apply for passports.
3. Sovereign wealth funds and pension funds which are using withholding tax treaty rates (as opposed, for example, to relying on sovereign exempt status) can be admitted into the scheme as lenders.

In general, the relaxations and extensions to the DTTP scheme are welcome, particularly in allowing a broader range of borrowers to be able to rely on passports. However, it is disappointing that the revised conditions that allow partnerships to participate in the scheme as lenders are as restrictive as they appear. In order for an overseas partnership lender to be able to apply successfully for a passport, all the partners in the partnership need to be resident in the same jurisdiction and entitled to

the same treaty benefits. In practice, this is not often the case.

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