

# Client Alert

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## New UK Withholding Tax Exemption Set to Boost the UK Private Placement Market

By **Sonia Girgis and Trevor James**

On 4 December, George Osborne in his Autumn Statement, announced a new UK withholding tax exemption for interest payments on UK private placements. The announcement was followed by draft legislative clauses with the Finance Bill 2015, released yesterday.

The new exemption will mean that UK corporate borrowers will be able to access worldwide financing with significantly less UK withholding tax stumbling blocks. The current 20% UK withholding tax charge has two main constraints on the UK private placement market. The first is that UK borrowers are restricted as to the jurisdictions from which they can obtain financing as there may not be double tax treaties to eliminate or reduce the 20% withholding tax rate. Such tax charge does not encourage cross-border borrowing. Secondly, although withholding tax is technically the tax of a lender, the market practice in regards to the contractual terms of the arrangements entered between lender and borrower mean that the UK borrower agrees to bear the interest burden if the interest arises and is not within a series of exclusions provided for in the agreement. The UK borrower also takes the burden of a change in law. Together, these have restricted the growth of the UK private placement market.

The conditions in the draft legislation include that the private placement instrument must represent a loan relationship of a company, be issued for a minimum of 3 years, and not be listed on a recognised stock exchange. In addition the draft legislation allows further conditions to be set out in the form of regulations and these can relate to the security itself, the terms and conditions of its issuance, the loan relationship, and to the issuer and holder of the security. The new legislation will take effect after the date of Royal Assent to the Finance Bill 2015.

We expect that the new UK withholding tax exemption will provide a significant boost to the UK private placement market.

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