

TAX ISSUES IN FINANCING TRANSACTIONS

QUESTIONS AND ANSWERS

Question – Tony Holland (Chairman):

Withholding tax on payments under guarantees – that has always been a vexed issue whether a payment under a guarantee or an indemnity of principal and interest would be liable to withholding tax. Has there been any resolution of that issue as far as anyone is aware?

Response – Alan Blaikie (Speaker):

There are two separate issues. The first is whether the guarantee fee itself is subject to any form of withholding tax and in certain circumstances guarantee fees fall under the withholding provisions for non-resident insurers and re-insurers, and there is a liability to tax on them as a result of that. It seems to me now with the proposed amendments to the definition of interest, there is a much greater exposure than before for the prospect that payments under guarantees might be subject to interest withholding tax – but that is an answer that is tentative pending some hopeful amendments to this expanded definition of interest.

Comment – Tony Holland (Chairman):

When there are changes and developments in issues of banking law, it seems to be a change or a gradual movement rather than a complete reversal. What we have heard today from our speakers is that changes in tax law can be anything from an enormous leap forward (with, finally, the removal of section 261), to a complete reversal of direction (with infrastructure bonds) or something in between, which is a state of uncertainty (which is the withholding tax arrangements). That leads us to say that we have to be extremely careful in the way we are looking at the tax implications for the financing transactions for our clients. All that means is that we are all going to have to do a lot more work and it will be a never-ending process.