

NATIONAL FOREIGN TRADE COUNCIL, INC.

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February 3, 2009

The Right Honorable Alistair Darling, MP
Chancellor of the Exchequer
HM Treasury
1 Horseguards Road
London, SW1A 2HQ

Dear Chancellor:

The National Foreign Trade Council, organized in 1914, is an association of some 300 US business enterprises engaged in all aspects of international trade and investment. Our membership covers the full spectrum of industrial, commercial, financial, and service activities, and our members have for many years been significant investors in the United Kingdom, where they have created significant jobs and wealth.

We have previously written to you on the subject of the reform of foreign profits project which has been ongoing in the UK for several years. We are now writing again as the result of draft legislation (and guidance notes) released for public comment on December 9, 2008.

We would first like to congratulate you on moving towards a dividend exemption system. Additionally, we would support allowing further time for consideration of some of the difficult issues raised by the UK CFC rules (about which we wrote in our last letter).

However, we are very concerned about the proposed "worldwide debt cap" rule. The proposed legislation is very wide reaching and complex, and its introduction in its current form would cause great uncertainty both for existing and potential inbound investors. These factors will have a negative impact on the UK's attractiveness as a location for inward investors and could lead to the overall foreign profits package (including the dividend exemption) being seen as making the UK less competitive in the international arena. Particularly in a time of recession, that cannot be a constructive policy for the UK.

We understand that the Treasury and HMRC have committed to improve the situation by the provision of several safe harbors ("gateways"). The details of these gateways have not yet been announced, however, and, in light of the negative impact that this new legislation (without changes) will have on inbound investors together with the expected very short timetable for enactment (anticipated to be July 2009), we thought it necessary to comment on the proposal as it currently stands.

First, the complexity of application and administration seems almost without precedent, even on a global basis. This is caused by the fact that there are so many separate calculations that have to be made. Certain calculations must be made on a gross basis, others on a net basis. Calculations must be made entity by entity; in some cases even for members of a group that are not within the UK. Furthermore, if a company uses US GAAP, there would be a requirement to convert to IFRS (although we understand this may be dealt with by a “white list”). In addition there are carve-outs for certain types of financial services businesses and not for others.

Secondly, the detailed calculations lead to unintended results and disallowances due to their complexity. In addition there are particular issues, for example raised by the calculations for groups which have both financial and non-financial services businesses, or which have Treasury Centers (among others), and we know that your officials are aware of these.

Third, the time periods for making calculations and the associated additional returns are very restrictive and do not fit into the existing administrative framework, thus making all of the administration still more time-intensive (and prone to error). And the tests differ in material - but not necessarily logical - ways from other UK tests.

More broadly, our members do also wonder somewhat at the rationale of these rules. The guidance notes state: “The UK provides very generous rules for the deductibility of interest...” (p. 14). However, the UK does already have thin capitalization rules, the “unallowable purpose” rules (which are also being extended as part of the foreign profits package), and the anti-arbitrage rules (about which we wrote to your predecessor in 2005), all of which can restrict interest deductibility and add complexity for inbound investors. In light of all of these, therefore, we would question whether the guidance note statement is completely accurate. We would also question whether it is truly necessary to add a fourth, overlapping, regime to the legislative mix.

We appreciate the efforts that we understand your officials are making to address the many difficulties the proposal raises, and hope that they will be able to satisfactorily deal with these issues. But time is very short if indeed this package is to be enacted in 2009. We believe there would be significant merit to waiting on the worldwide debt cap rules, and spending the additional time -- as is the case with the CFC rules -- working with business to make the proposed system less complex. Given the current economic downturn, and significant losses being made by the banking and other sectors, we do not believe that a short delay in implementing the worldwide debt cap rules would adversely impact tax revenues. If, however, the rules were to enter into law in their current form there is no doubt that they would act as a significant disincentive to foreign investment in the UK.

In short, we do hope that you will reconsider the introduction of the worldwide debt rules in their current form, except with the very broadest of safe harbors. There is much that is good in the foreign profits package, and that our members think is forward-looking. It would be unfortunate if the worldwide debt cap rules were to negate all of that, and instead discourage foreign investors.

Yours sincerely,



William A. Reinsch
President

cc: The Right Honorable Stephen Timms, MP
Financial Secretary to the Treasury